TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 646.

THE STATE OF FLORIDA ON THE RELATION OF SYDNEY I. WALLIS, PLAINTIFF IN ERROR,

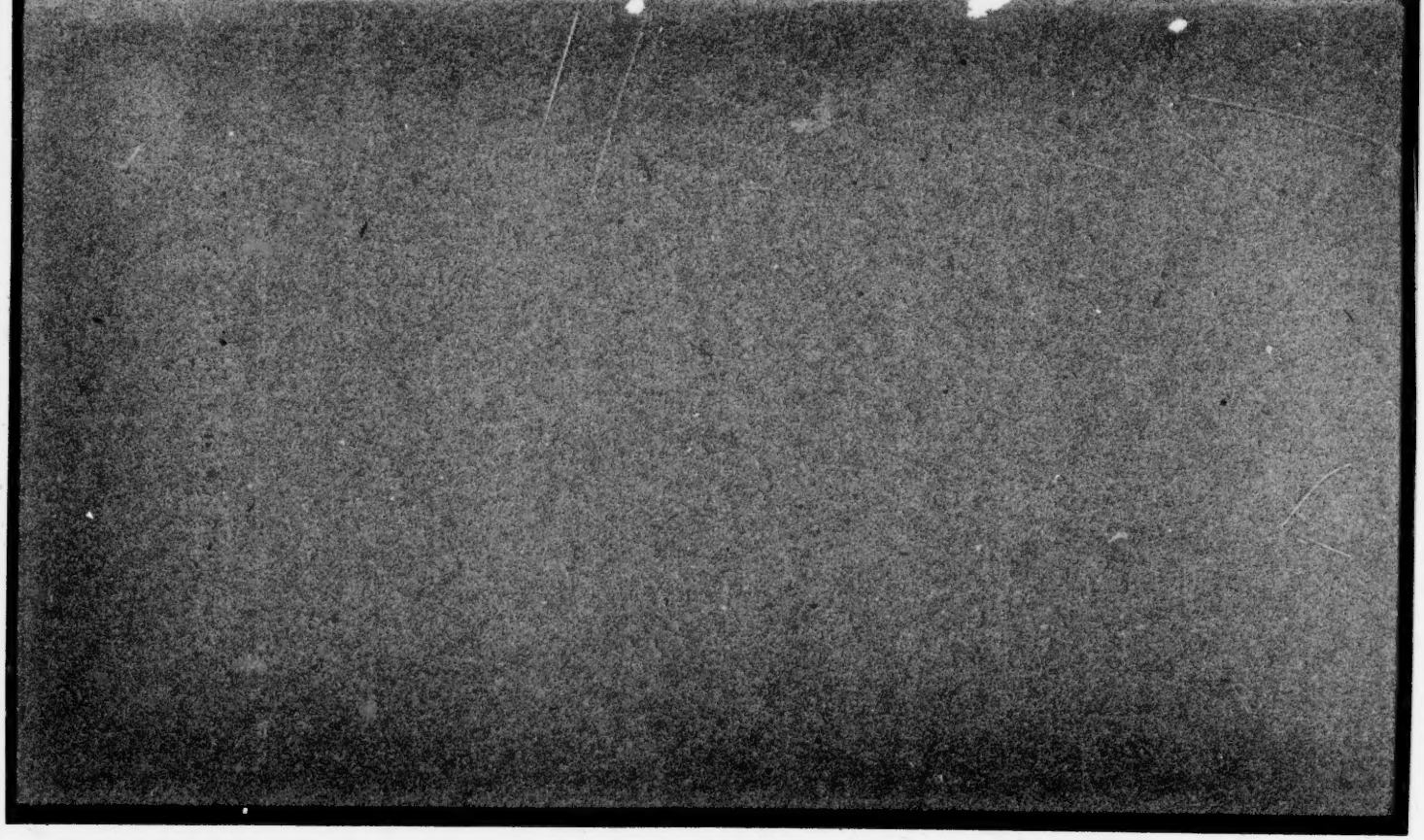
vs.

A. C. CROOM, COMPTROLLER OF THE STATE OF FLORIDA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED MAY 11, 1912.

(23,207)



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a Be it remembered that on the 20th, day of June A. D. 1911, at a regular term of the Supreme Court of the State of Florida, came the plaintiff in error, The State of Florida on the relation of Sydney I. Wailes, by counsel and filed in the clerk's office of the Supreme Court of Florida a transcript of the record of the proceedings and order of the Circuit Court of Florida for Leon County, in a certain cause, wherein The State of Florida on the relation of Sydney I. Wailes was petitioner, and A. C. Croom, as Comptroller of the State of Florida, was respondent, and of the writ of error therein from the judgment of the Circuit Court therein rendered, which said transcript of record of the cause aforesaid and subsequent proceedings to judgment and writ of error therefrom is in the words and figures as follows, to-wit:

1 *Transcript of Record of Proceedings in the Circuit Court of Leon County, Florida, in the Suit of State of Florida on the Relation of Sydney I. Wailes, Plaintiff, vs. A. C. Croom as the Comptroller of the State of Florida, Defendant, Therein Lately Pending.*

On the 10th day of October, A. D. 1910, the plaintiff filed his Petition for Writ of Mandamus in the words and figures following:

In the Circuit Court, Second Judicial Circuit, Leon County, Florida.

STATE OF FLORIDA on the Relation of SYDNEY I. WAILES
vs.
A. C. CROOM, as the Comptroller of the State of Florida.

STATE OF FLORIDA,
County of Leon, To-wit:

To Honorable John W. Malone, the Judge of the Circuit Court for the Second Judicial Circuit of Florida:

The State of Florida, on the relation of Sydney I. Wailes, brings this petition against A. C. Croom as the Comptroller of the State of Florida, and, thereupon petitioner showeth: That the Legislature of the State of Florida, by an Act approved on the 2nd day of March, 1877, authorized and empowered the Governor of the State of Florida "to appoint an agent to adjust and settle all claims between the State and the United States Government, growing out of the war with the Seminole Indians in the years 1856 and 1857, as well as other claims that may exist between the two governments." That by another Act of the Legislature of the State of Florida, approved on the 11th day of March, 1879, the Governor of the State of Florida was "authorized and empowered to appoint a commissioner with power to proceed to Washington and adjust the

claims of the State of Florida against the United States." A copy of the said Act of the Legislature of the State of Florida, approved March 2nd, 1877, and of Section five of said Act of the Legislature, approved March 11th, 1879, are set out at large in the Exhibit to this Petition attached and called "Statement of account," which said "Statement of Account" is made part of this Petition the same as if fully set out herein.

2 That under and by virtue of the aforesaid Laws of the State of Florida, George F. Drew, who was then the Governor of the State of Florida, on the 16th day of July, 1879, constituted and appointed Sydney I. Wailes "Agent for the State of Florida to represent the said State of Florida before the Department of the General Government at Washington City, and to ask, demand and receive of the Government of the United States, any and all sums of money due the State of Florida for expenses incurred by said State on account of Indian hostilities in said State from the year 1849 to the year 1856 inclusive," and for the work to be done and services to be performed by said Sydney I. Wailes, under his appointment as agent for the State of Florida, he was to receive "as compensation for performing the above work, fifteen per cent of all sums collected from the General Government upon such Indian War Claims, and to defray all expenses incurred in the prosecution of the same." That under and by virtue of a resolution passed, by Governor George F. Drew and his Cabinet, on the 9th day of August, 1879, the foregoing appointment was amended so as to include in the said appointment the year 1857. A copy of both the said appointment, and the said resolution of the Governor and his Cabinet are set out at large in the Exhibit to this Petition attached and called "Statement of Account, which said "Statement of Account" is made part of this petition the same as if fully set out herein. And from the said year 1879 to the year 1901 every Governor of the State of Florida recognized, acquiesced in and endorsed the appointment of petitioner as such Agent for the State of Florida to perform the services hereinbefore mentioned, and no question as to the right or authority of petitioner to so represent said State of Florida and to perform the services before mentioned was raised during the period of time before mentioned. And, from time to time, during the period of time from 1879 to 1901, petitioner made reports to the different Governors of Florida touching and concerning the matters entrusted to him as said Agent for said State of Florida, setting out in his said reports to the said Governors what had been done with said matters so entrusted to him.

3 That said Sydney I. Wailes accepted the aforesaid appointment as "Agent for the State of Florida" and, immediately after having received the said appointment, he began work thereunder, and he employed a force of clerks and other assistants, and he devoted himself assiduously to the said work, and he finally succeeded in having the claims or accounts between the State of Florida and the General Government of the United States on account of the said Indian hostilities in said State of Florida from the year 1849 to the year 1857 inclusive, duly audited, determined

and settled by the Treasury Department of the United States Government under date of December 16th, 1889, as is fully shown by Executive Document Number Sixty-eight, Fifty-first Congress, House of Representatives, First Session. A copy of which said Executive Document #68 is set out at large in the Exhibit to this petition attached and called "Statement of Account," which said "Statement of Account" is made part of this petition the same as if fully set out herein. That when petitioner had succeeded in having the said claims or accounts between the State of Florida and the General Government of the United States, on account of Indian hostilities in said State of Florida from the year 1849 to the year 1857 inclusive, determined and settled he had done all that he had contracted to do or that he could do or perform under his said appointment as Agent for the State of Florida, and there remained nothing further that he could do or perform under the said appointment as Agent for the State of Florida, and that the only thing that remained to be done after he had succeeded in getting audited, determined and settled the afore-said claims or accounts between the State of Florida and the General Government of the United States was the passage of a bill by the Congress of the General Government of the United States making an appropriation to pay to the State of Florida the money found to be due said State under the said audited, determined and settled account aforesaid. Yet though petitioner had done everything that he had contracted or been appointed to do, he remained in the City of Washington, giving to the Florida delegation in Congress the benefit of his long experience

4 in matters of legislation with relation to the presentation of like matters to Committees of Congress, the drafting of bills and appropriate amendments and other like matters, looking to the final passage of appropriate legislation carrying into effect the Statement of account made by the Secretary of the Treasury, and the appropriation of the necessary funds to pay the State of Florida the large amount of money found to be due said State, and on account of petitioner's wide acquaintance with Representatives and Senators in Congress, his said services so rendered were very valuable to the said Florida delegation in Congress in the manner so stated.

That the Congress of the United States accepted the determined, audited and settled accounts between the General Government of the United States and the State of Florida, on account of Indian hostilities in said State of Florida, from the year 1849 to the year 1857 inclusive as stated by the Treasury Department of the United States in Executive Document #68, which said determined, audited and settled accounts were procured through the perseverance, labor and skill of petitioner; and by Act of Congress of May 27th, 1902, the Treasury Department of the United States was authorized to settle the mutual account heretofore stated between the United States and the State of Florida, under the authority of an Act of Congress, according to the mode of settling the same, found near the foot note at the third page of the letter of the Secretary (of the Treasury) submitting his report dated December 16th, 1889, published as Executive Document Sixty-eight, Fifty-first Congress, First Ses-

sion, by continuing the computation of interest to the date of settlement, and ascertaining the balance due the said State. And the State of Florida received, by virtue of the aforesaid Act of Congress, the sum of One Million Eighty-nine Thousand One Hundred and Fifty-eight Dollars and Sixty-six Cents ($1,089,158,66) in cash and in securities of the State held by the General Government of the United States, on account of said Indian Hostilities in said State of Florida from the year 1849 to the year 1857 inclusive. And, thereupon, and because of the receipt by the State of Florida of the said sum of $1,089,158,66 from the General Government of the
5 United States on account of Indian hostilities in the State of Florida from the year 1849 to the year 1857 inclusive, the State of Florida became indebted to Petitioner in the sum of $163,373.80 which is 15% of the sum so received by the State of Florida as aforesaid.

That although the State of Florida has received from the General Government of the United States the said sum of $1,089,158,65 on account of Indian hostilities in said State of Florida from the year A. D. 1849 to the year 1857 inclusive, the receipt of which said sum of money was procured by petitioner in getting the claims or accounts between the State of Florida and the General Government of the United States on account of said Indian Hostilities duly audited, determined and settled by the Treasury Department of the United States, petitioner has not received or been paid fifteen per cent of the said sum of money so received by the State of Florida from the General Government of the United States on account of the Indian hostilities in said State of Florida from the year 1849 to the year 1857 inclusive, nor any other sum or sums of money for or on account thereof, and there now remains due and unpaid to petitioner by the State of Florida the sum of $163,373.80, which is fifteen per cent of the said sum of money so received by the State of Florida from the General Government of the United States, on account of Indian hostilities in said State of Florida from the year 1849 to the year 1857 inclusive, with interest thereon at the legal rate from the 19th day of December, 1902.

That on the 14th day of September, 1910, petitioner duly made out his account against the State of Florida for the money due to him for his services as Agent of the State of Florida, under his appointment as Agent for the State of Florida, in having audited, determined and settled the claims or accounts between the State of Florida and the General Government of the United States on account of Indian hostilities in the said State of Florida from the year 1849 to the year 1857 inclusive, and he, in person, presented his said account against the said State of Florida, for his services as aforesaid, to A. C. Croom, who is, and was on that date, the
6 Comptroller of the State of Florida, and he requested the said Comptroller of the State of Florida to examine, audit and settle his said account against the State of Florida, but the said Comptroller refused to receive the said account of petitioner, and the said Comptroller refused to examine, audit and settle petitioner's said account, although he, the said Comptroller, is required to do so

by the Laws of the State of Florida. That a copy of the account made out and presented to the Comptroller on the 14th day of September, 1910, with all the exhibits thereto appended and which were thereto appended at the time of such presentation and demand, is attached to this petition and marked "Statement of Account" and is, with all exhibits thereto appended, made part of this petition.

By means whereof, and on account of the refusal of the said A. C. Croom as the Comptroller of the State of Florida, to examine, audit and settle the claim and account of petitioner against the State of Florida, petitioner is denied his right under the Laws of the State of Florida to have his said claim against the State of Florida examined, audited and settled, and is, thereby, prevented from receiving his just compensation for his services, so rendered as aforesaid, to which compensation he is justly entitled.

Wherefore, petitioner prays that a Writ of Mandamus may issue, directed to said A. C. Croom as the Comptroller of the State of Florida, commanding him, forthwith, to examine, audit and settle the said claim and account of petitioner so arising under the Laws of the State of Florida, as by Statute in such case it is made and provided; and that such further order may be made in the premises as justice may require.

CLARK & FIELDING,
Attorneys for Petitioner.

STATE OF FLORIDA,
County of Duval:

Personally appeared before the undersigned authority, Sydney I. Wailes, who, being duly sworn, says that he is the relator in the above and foregoing petition for mandamus; that he is ac-
7 quainted with the contents of said petition and with all the matters and things therein set forth and alleged, and that such things and matters are of his own knowledge true as therein set forth.

SYDNEY I. WAILES.

Sworn to and subscribed before me this the 21st day of September, A. D. 1910.

[NOTARIAL SEAL.] ALEXANDER RAY,
Notary Public, State of Florida at Large.

My Commission Expires Feb. 6th, 1913.

Statement of Account.

The State of Florida to Sydney I. Wailes, Dr.

December 19th, 1902.

To services as Agent for the State of Florida before the Departments of the General Government at Washington, D. C., in the ascertainment and settlement of expenses incurred by said State from the year 1849 to the year 1857, inclusive, on account of Indian hostilities, at the rate (as per contract) of fifteen per cent of all sums collected by the State of Florida from the United States upon such Indian War Claims, viz: Fifteen per cent of $1,089,158.66..... $163,373.80

STATE OF FLORIDA,
County of Leon:

Personally appeared before the undersigned authority Sydney I. Wailes, who, being duly sworn, says he is the Sydney I. Wailes mentioned in the above and foregoing statement of account, that, heretofore, to-wit: on the Seventh day of July, in the year of
8 our Lord One Thousand Eight Hundred and Seventy-nine, the Honorable George F. Drew, then Governor of the State of Florida, being thereunto lawfully authorized by two certain Acts of the Legislature of the State of Florida, entered into a Contract with Affiant under the Great Seal of the State of Florida, under the terms of which he constituted and appointed affiant Agent of the State of Florida to represent the said State before the Departments of the General Government at the City of Washington, in the matter of auditing and adjusting the accounts of the State of Florida for money due said State for expenses incurred on account of Indian hostilities in said State from the year 1849 to the year 1856 inclusive, and agreed to pay affiant for his services in that behalf Fifteen per cent of all sums collected from the General Government by the State of Florida upon such Indian War claims, all of which said statements of fact will more fully and at large appear by reference to the two Acts of the Legislature, Viz: Chapter 3030 Laws of Florida, Approved March 2nd, 1877, a copy of which is hereto attached marked "Exhibit A" and Chapter 3113 Laws of Florida, Approved March 11th, 1879, a Copy of Section Five (5) of which is hereto attached marked "Exhibit B," and also a certified copy of said contract hereto attached marked "Exhibit C," the original being in the keeping of Affiant and ready to be produced when any proper officer or court may require such production; that on August 9th, 1879, the Governor of the State of Florida and his Cabinet included in said Contract the year 1857 by resolution duly passed and recorded, as follows: "Resolved by the Governor and his Cabinet, That the resolution of June 15th, 1879, employing and appointing S. I. Wailes, of Washington, D. C., to represent the State of Florida before the Departments of the General Government at

Washington City, to ask, demand and receive of the United States Government all sums of money due said State on account of the Indian hostilities in said State, he so amended as to include the year 1857"; that in pursuance of the terms of said contract, affiant, after having accepted said employment, immediately began the work contemplated, and by employing a force of clerks and other
9 assistants, and devoting himself assiduously to such work, and for a period of time covering more than ten years, finally succeeded in having such accounts duly audited, determined and settled by the proper accounting officers of the Treasury Department of the United States Government, as is fully shown by the Statement of the Secretary of the Treasury under date of December 16th, 1889, published as Executive Document Number Sixty-eight (68), Fifty-first (51) Congress, House of Representatives, First Session, a copy of which Executive Document Number Sixty-eight (68) marked "Exhibit D" is hereto attached and hereby made a part hereof.

Affiant swears that, having by the expenditure, as stated, of a large amount of money in the employment of clerks and by the rendering of a great deal of labor on his own part, he finally succeeded in procuring settlement of such accounts in the Department as stated; that this constituted full and complete performance of all of the things he had contracted to do and perform by and with the Governor of the State of Florida in and by said Contract, and that when such adjustment was had there remained nothing that he could or should do and perform in the premises; that afterwards, to-wit: on the 25th day of July, 1902, under and by virtue of this said settlement the Government of the United States paid to the State of Florida by Treasury Warrant the sum of $679,698.00 and on the 19th day of December, 1902, the United States paid to the State of Florida by Treasury Warrant the sum of $13,248.00, making total payments in cash of $692,946.00; that in addition to such payments, and also by virtue of said settlement the United States Government delivered to the State of Florida certain bonds of said State, then held and owned by the United States, amounting to the par value of $132,000.00, and upon which there was due by the State of Florida to the Government an accumulated interest, all aggregating the total sum of $1,089,158.66, as above stated.

Affiant further swears that from 1879 to 1901 every Governor of the State of Florida recognized, acquiesced in, and endorsed his employment as Agent for the State of Florida touching the set-
10 tlement of these claims. Governor William D. Bloxham in his message to the Legislature of the State of Florida, in the year 1883, distinctly recognized and approved the employment of affiant, as he also did in his Message to the Legislature in 1885; that on the 27th day of August, 1888, Governor Edward A. Perry, then Governor of the State of Florida, under the Great Seal of the State, attested by the Secretary of State, issued a certificate to the Secretary of War of the United States, endorsing and approving affiant's contract with Governor Drew and asking that the Departments of the Federal Government accord to the affiant all the cour-

tesies due a regularly appointed and qualified Agent of the State, a copy of which said certificate is hereto attached marked "Exhibit E" and hereby made a part hereof; affiant further swears that during the year 1889 in a number of letters, telegrams, and other communications, Governor Francis P. Fleming, then Governor of the State of Florida, unreservedly recognized and approved affiant's contract with Governor Drew, and that in 1891 Governor Fleming, in his Message to the Legislature of Florida, referred to the services of affiant as State Agent, and submitted to the Legislature the report which affiant had then recently made, and affiant further swears that on the 28th day of March, 1889, Governor Francis P. Fleming, then Governor of the State of Florida, addressed a communication to the Secretary of the Treasury of the United States, naming affiant as State Agent, and asking that he be recognized and treated as such, a copy of said communication being marked "Exhibit F" is hereto attached and hereby made a part hereof; Affiant further swears that Governor Henry L. Mitchell, the successor of Governor Fleming, likewise by various official acts during his administration, covering the period of from January 1893 to January 1897, recognized and approved the contract affiant had with Governor Drew, and that from January, 1897, to January 1901, when Governor William D. Bloxham was again Governor of the State of Florida, the said Contract was by him still recognized and approved, as valid and subsisting; and that practically every Legislature during the
11 period mentioned, which convened in the State, recognized and approved such employment and the terms thereof, as will fully appear by reference to the Journals of the various Legislative Sessions.

Affiant also attaches hereto copies of certain documents, Two (2) in number, marked respectively Exhibits 1 and 2, the same being reports made by affiant as such State Agent to Governors Fleming and Mitchell, and avers that such like reports were made to the different Governors of the State of Florida from time to time, as by reference to the records of the Executive Office will fully appear.

That, although affiant's contract, in so far as he was concerned, had been fully completed prior thereto, yet, as late as 1894, when it became necessary for him to be absent from Washington for a considerable time, he took the precaution to secure the naming of his brother W. E. Wailes, by the Governor of the State of Florida to act temporarily in his stead, and in every way took all necessary precautions to guard and protect the interests of the State. Affiant swears that he has not been paid the said sum of $163,373.80, or any portion thereof, and that the said sum in its entirety is still due to affiant by the State of Florida, for the services rendered and expenses incurred, together with interest thereon at the legal rate from the 19th day of December, A. D. 1902.

That therefore affiant, in view of the statements of fact herein set forth and Exhibits hereto attached and made parts hereof, under Chapter One Hundred and Forty-six (146) of the Act of 1848 and Chapter One Thousand Two Hundred and Seventy-five (1275) of the Act of 1861, as embodied in Chapter Twenty-six (26), Laws of

Florida, as contained in McClellan's Digest of said Laws of Florida, which said Laws were in force when the said contract was executed, remained in force during the entire period of its performance, and was in force when the contract was finished by affiant, and is still in force, in so far as affiant's rights under said contract are concerned, presents this his claim to the Comptroller of the State of Flor-
12 ida, and demands that the same shall be examined, audited and settled by said Comptroller, and that the said Comptroller shall issue his warrant upon the Treasurer of the State of Florida for the amount of principal and interest due affiant for his services rendered under his said contract, as fully stated herein, and as by law is made and provided.

Affiant further swears that the Congress of the United States accepted the statement of the mutual accounts between the State of Florida and the United States, as stated by the Secretary of the Treasury in Executive Document Number 68, Fifty-first Congress, First Session, which said Statement of Account was the result of labors and services of affiant, and said mutual accounts were settled upon that basis, as shown by the Act of Congress of May 27, 1902, all of which is hereby referred to and a portion of said Act reading as follows, to-wit:

"To settle the mutual accounts heretofore stated between the United States and the State of Florida under the authority of an Act of Congress, according to the mode of settling the same, found near the foot of the third page of the letter of the Secretary submitting his report dated December 16, 1889, published as Executive Document Number 68, Fifty-first Congress, First Session, by continuing the computation of interest to the date of settlement, and ascertaining the balance due the said State," is hereby set forth as conclusive proof thereof.

Affiant avers readiness, if further proof be required, to establish by oral testimony and documentary evidence each and every allegation and statement in this affidavit contained.

SYDNEY I. WAHLES.

Sworn to and subscribed before me this 14th day of September, A. D. 1910.

P. V. LANG,

[NOTARIAL SEAL.] *Notary Public, State of Florida.*

My Commission Expires January 8, 1912.

13 EXHIBIT A.

Chapter 3030 (No. 54).

An Act to Provide for the Settlement of Claims between the State of Florida and the United States.

The people of the State of Florida, represented in the Senate and Assembly do enact as follows:

SECTION 1. That the Governor is hereby authorized and em-

powered to appoint an Agent to adjust and settle all claims between the State and the United States Government, growing out of the war with the Seminole Indians in the years 1856 and 1857, as well as other claims that may exist between the two Governments.

SECTION 2. The expenses of such agent shall be paid out of the amount appropriated for contingent expenses of the State, and shall not exceed the sum of Eight Hundred Dollars.

SECTION 3. Such agent shall report to the Legislature at its next regular session.

Approved March 2, 1877.

EXHIBIT B.

Chapter 3113 (No. 15).

An Act to Provide for the Examination and Settlement of Claims Against the State of Florida for Services Rendered During the Last Seminole Indian War, and for the Settlement of Claims of the State of Florida against the United States.

The people of the State of Florida represented in Senate and Assembly, do enact as follows:

* * * * * * *

SECTION 5. That the Governor is hereby authorized and empowered to appoint a Commissioner with power to proceed to Washington and to adjust the claims of the State of Florida against the United States; and the moneys paid by the United States, or so much thereof as may be necessary for that purpose, shall be
14 and are hereby appropriated for the payment of the certificate issued as aforesaid, and to defray the expenses of the said Board of Commissioners; and the sum of Two Thousand Dollars or so much thereof as may be necessary, from any moneys in the State Treasury not otherwise appropriated, is hereby appropriated to defray the expenses of said Commissioner to Washington, and the incidental expenses of the said Commissioner.

EXHIBIT C.

Contract with Governor Drew.

STATE OF FLORIDA,
EXECUTIVE DEPARTMENT.

Know all men by these presents, That I, George F. Drew, Governor of the State of Florida, reposing especial trust and confidence in the ability, fidelity and prudence of Sydney I. Wailes, do hereby constitute and appoint the said Sydney I. Wailes Agent for the State of Florida to represent the said State of Florida before the Department of the General Government at Washington City, and to ask, demand and receive of the Government of the United States

any and all sums of money due the said State of Florida for expenses incurred by said State on account of Indian Hostilities in said State from the year 1849 to the year 1856 inclusive.

The said Wailes to receive as compensation for performing the above work, fifteen per cent of all sums collected from the general Government upon such Indian War Claims and to defray all expenses incurred in the prosecution of the same.

In testimony whereof I have hereunto set my hand and caused the Great Seal of the State to be attached this Sixteenth day of July, A. D. 1879.

[SEAL.] (Signed) GEORGE F. DREW, *Governor.*

By Attest:
W. D. BLOXHAM,
Sect. State.

15 EXHIBIT D.

House of Representatives.

51st Congress, 1st Session. Ex. Doc. No. 68.

Account between the General Government and the State of Florida.

Letter from the Secretary of the Treasury Transmitting, with Accompanying Papers, the Report of the Third Auditor of the Treasury upon the Mutual Demands of the State of Florida and the United States.

December 18, 1889.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT, *December* 16, 1889.

SIR: In compliance with Section 5 of the deficiency act of March 2, 1889 (25 Stat. p. 939)—

That the Secretary of the Treasury be, and he is hereby authorized and directed to examine the claim of the State of Florida, reported in the letter of the Secretary of War dated May 22, 1882, and under previous Acts of Congress, and to make a report upon the same to the next regular session of Congress, and in connection therewith to report the amount of all claims in favor of the General Government against the State of Florida, and in said report to state the account between the General Government and the State of Florida.

I have the honor to transmit herewith the report of the Third Auditor of the Treasury of the 14th instant, with accompanying papers, upon the mutual demands of the State and the United States.

Respectfully yours,

GEO. S. BATCHELLOR,
Acting Secretary.

The Speaker of the House of Representatives.

16 TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
WASHINGTON, D. C., *December* 14, 1889.

SIR: The deficiency Act of March 2, 1889, Section 5 provided: That the Secretary of the Treasury be and is hereby authorized and directed to examine the claim of the State of Florida reported in the letter of the Secretary of War dated May 22, 1882, and under previous Acts of Congress, to make report upon the same to the next regular Session of Congress, and in connection therewith to report the amount of all claims in favor of the General Government against the State of Florida, and in said report to state the account between the General Government and the State of Florida.

Under the date of March 26, 1889, you instructed the Third Auditor to prepare a report in accordance with said provision.

The State advances two claims under this provision, viz:

First. The claim specifically referred to in the Act as reported in the letter of the Secretary of War, May 22, 1882. This claim is for the reimbursement of certain expenses incurred by the State in suppressing Indian Hostilities between December 1, 1855, and January 1, 1869, $268,103.40 (Vide Joint Resolution of March 3, 1881; also report by Secretary of War, in House Ex. Doc. No. 203, 47th Congress, 1st Session).

Second. Sundry expenses for similar purposes, incurred in 1849, but not paid by the State until 1859, $21,685.72. In making the report above referred to the Secretary of War excluded these items because the joint resolution under which he was acting was limited to expenses incurred between December 1, 1855, and January 1, 1860. But the Act of 1889 requires a report upon any now unsettled claims by the State.

On the claim originating in the years 1855-'59 (Vide detailed statement) I find an expenditure proven in the sum of	$246,426.51
Deduct amount realized by the State by Sales of Military Stores (Ex. 111)	1,405.65
	$245,020.86
17 In the items of expenses in 1849 (paid by the State in 1859) I find an expenditure proven (Vide detailed statement) in the sum of	$16,913.45
Aggregate	$261,934.31

Offsets—demands against the State. In reply to the inquiry addressed to you by this Office April 10, 1889, you have transmitted responses by the Departments and Bureaus respecting the existence of any such demands. Only two are reported, viz:

First. The first Comptroller states that a balance of $72,756.41 stands against the State on account of "direct tax" under Act August 5, 1861. In the case of the United States vs. Louisiana (123 U. S. Rep. 32) the Supreme Court decided that the apportionment of the Tax ($20,000,000) among the States was merely descriptive of

the aggregate to be assessed upon lands of individuals within each State; that the act contemplated, in the first instance, that the United States, would, by its own direct processes, collect the tax upon each parcel of land from the parcel itself, and that such aggregate constituted no debt of the State in its corporate capacity, unless the State had, as in some instances, specially assumed it.

As Florida did not assume the aggregate assessed upon the lands within its boundaries, I presume Congress will not regard the balance above mentioned as a debt of the State, or treat it as an off-set to a demand due the State.

Second. The Secretary of the Interior reports that the United States holds, as assets of its "Indian trust fund," bonds of the State in the sum of $132,000, bearing 7 per cent interest; that the interest to July 1, 1862, was paid by the State, and that, since the suspension of the interest payments by it, the Interior Department has from time to time applied to the interest sundry accounts falling due to the State on sundry accounts. And thus it appears that at this date the interest has been paid to include November 26, 1873.

NOTE.—This computation includes the 5 per cent due the
18 State on sale of United States Swamp Lands, as shown in the settlement of the accounts of the United States Land Office at Gainesville, Fla., covering the fiscal year 1888-'89. Such percentages due the State are liable to appear in the future settlement of the land office accounts.

The question now arises in respect to interest upon the demands of the State. If this were a case wherein the accounting officers had been directed to make a final settlement, I would be compelled to say that the Executive Departments have no power to award interest upon claims against the United States unless expressly so provided by Statute. But this proceeding is not of that nature. Congress has reserved to itself the determination what shall be the plan and terms of the general and final settlement between the United States and the State, and has merely called upon this Department to aid its deliberations, by examining into the details of any mutual demands and by suggesting some equitable mode of settlement.

In the debate upon this provision in the Act of March 2, 1889, it was assumed in the Senate that mutual interest would be the rule in the final adjustment, and the general tenor of the provision for a final settlement of all mutual demands seems to indicate that Congress intends eventually to make or provide for a settlement upon the broad and equitable principles applicable to settlements between individuals of their mutual accounts and demands.

It is not clear in what precise sums the funds for these expenditures were provided by loans effected upon interest. It is, however, evident that the amount borrowed upon 7 per cent bonds and thus applied went much beyond the $132,000 procured from the United States; and it is highly probable that the entire bulk of the funds for these expenditures was borrowed upon interest.

It also appears that the State was compelled to put its bonds

(except those sold to the United States) on the market at a heavy discount.

It would be impossible to fix with strict precision upon any equated date from which an aggregate due the State should draw interest. The payments by the State were in a vast number
19 of small sums, scattered through the period 1855-'59, and the exact day of payment in many cases is not known; also the exact dates at which the State effected loans or sold bonds (except those sold to the United States) are not known. The two purchases by the United States were about midway of this period, viz: $125,000 July 1, 1857, and $7,000 January 1, 1858.

Under the circumstances, absolute precision being impossible, I have assumed that January 1, 1858, would be fair to each party as a date from which to reckon interest on the amount due the State.

Upon the basis above stated two modes of stating a mutual account are suggested, viz:

First. By computing interest on each side to January 1, 1890, and there striking a balance, thus:

Aggregate due the State		$261,934.31
Interest thereon at 7 per cent January 1st, 1858, to January 1, 1890		586,732.85
		$848,667.16
Principal of Bonds held by United States	$132,000	
Interest from November 27, 1873, (to which date interest has been paid) to January 1, 1890	148,712.66	
		280,712.66
Balance		$567,954.50

Second. By computing interest on the aggregate due the State to include November 26, 1873 (to which date inclusive the interest on the bonds held by the United States has been paid), and striking a balance as of that date, viz:

20 Principal due State		$261,934.31
Interest at 7 percent January 1, 1858, to November 26, 1873, inclusive	$291,634.74	
Deduct Bonds held by United States	132,000.00	
Leaving balance due as interest		159,634.74
		421,569.05

If Congress deems proper to allow interest on the principal ($261,934.31) from November 27, 1873, to January 1, 1890, the interest at 7 per cent would be $295,098.10; or, at 6 per cent $252,941.23.

In any final settlement which may apply and thus liquidate the bonds held by the United States it would be advisable that the Act of Congress make express provision for the surrender of the bonds and coupons to the State.

Detailed Statements of the two claims follows.

Very respectfully,

W. D. HART, *Auditor.*

Hon. William Windon, Secretary of the Treasury.

Claim for Expenses in 1855-'59—*Detailed Statement.*

(Vide House Reports, Ex. Doc. 203, 1st Sess. 47th Cong.)

By Act of August 30, 1856, (11 Stat. 150), an appropriation of $240,667.42 was made for pay and supplies of mounted and foot companies of Florida Volunteers; and by Act of June 30, 1859 (11 Stat. 429), an appropriation of $413,600 was made for pay of certain Florida volunteers in 1857-'58. The accounts of the United States Paymasters and quartermasters, by whom these two appropriations were disbursed, show that their payments were exclusively for the periods after the muster of volunteers into the United States Service. This claim by the State is confined to the period prior to such muster and to pay and expenses of troops never so mustered, and was not embraced to extend in those disbursements.

21

The report by the Secretary of War upon this claim was in great detail, and is printed in Executive Document above referred to. To avoid needless recapitulation I have taken that report as my basis, examining the items in the order therein observed, and specially commenting only upon a few, in respect to which I differ from the conclusions of the War Department.

Voucher No. 2, Abstract A.—F. M. Durance's Company.

(Page 6 and Exhibit No. 19, page 30.)

The War Department excluded the service of Second Lieut. Alderman Carlton because the officer's name did not appear on the muster-roll. F. M. Durrance, the Captain of the company, in a report to General Jesse Carter on June 14, 1856 (Vide Journals General Assembly 1856, Indian Affairs, Page 20), mentions the services of Lieutenant Carlton, and the killing of this officer by Indians on that day. The omission to report him no doubt arose from the fact that the muster-roll was not made up until after August 22, 1856. At this date Joseph Howell was Second Lieutenant of the Company, he having been elected on June 20, 1856, to succeed Lieutenant Carlton. The evidence of service is satisfactory; I therefore allow the item of $410.49.

Claimed by the State for this company.....	$15,794.91
I disallow for reasons stated in War Department Report.	378.70
I allow	15,416.21

Voucher No. 10, Abstract A.—J. J. T. Wright's Company.

(Page 6 and Exhibit No. 27, Page 52.)

Included in the disallowance was an item of $105.45 in the payment to James S. Turner, for the reason that Turner receipted for the entire term, whereas the muster-roll shows that after June 3, 1856, Elisha Gibson served as Turner's substitute.

The fact may have been that the substitute received his portion either from the paymaster or from Turner, and it may have
22 been arranged between them that Turner should receipt for the whole sum and then compensate Gibzenn. At all events, the service was performed and the State has paid for it. If Gibson is now entitled to anything his claim would now be against the State. The United States is not interested in the question.

I therefore allow this item claimed by the State for this Company	$9,667.71
I disallow for reasons stated in the War Department report	100.75
I allow	9,566.96

Voucher No. 21, Abstract A.—John McNeill's Company.

(Page 7.)

The War Department excluded the amount claimed as payment to this Company, because the State is not now able to produce the rolls, which have been lost.

There is no doubt of the company's service; also that Captain Pearson paid it, and that his account for such payment was duly rendered to the State and underwent precisely the same process of auditing with the accounts for the payment of the other companies. It must be presumed that Captain Pearson paid this company in accordance with the same rules and scale of prices applied to the other companies.

In the absence of precise information, it is reasonable to suppose that about the same percentage of errors would now be found in the rolls of this company, if they could be produced, which were found in the others.

Claimed by the State for this Company	$3,303.06
I disallow 2 per cent	66.06
I allow for reasons above stated	3,237.00

Voucher No. 22, Abstract A.—Simeon Sparkman's Company.

(Page 7.)

The same remarks apply to this expenditure as are noted in regard to Voucher No. 21.

23	Claimed by the State for this Company.....	$2,967.31
	I disallow 2 per cent.....	59.35
	I allow for reasons above stated.....	2,907.96

Voucher No. 26½, Abstract A.—Field and Staff Roll.

(Page 7 and Exhibit No. 39, Page 75.)

The War Department excepted to the amount paid to M. Whit Smith as salary, $1,075.40, on the ground that he was not an officer of a regiment, there being no regimental organizations.

The law contemplates the allowance to Florida for reasonable and legitimate expenses of keeping the force in active service. There were eighteen companies, scattered in different localities. For the duties of supplying these companies in all respects the State paid five persons, viz: Jesse Carter (designated as Special Agent, but in fact discharging the duties of a quarter-master general and commissary-general), M. Whit Smith commissioned by the Governor (Vide Journal 1856) and acting as a quartermaster and commissary, and three minor officers. This does not seem an overproportion to the duties, and not in excess of the provision which would be made for the same number of companies in the United States Service when widely scattered. The War Department took no exception to the compensation paid Jesse Carter, although it was not upon any scale of any grade in the United States Army, he having been paid a salary as agent, with commissions on disbursements, and reimbursements of office and traveling expenses. If the objections taken in Smith's case were good, they would seem to apply with equal force in Carter's Case.

I hold that the State should be allowed this item—as computed by the War Department, $1,075.40. For reasons above stated I also allow also items $833.00, $367.50, and $85.33.

	Claimed by the State on this roll.....	$12,341.49
	I disallow for reasons stated in War Department Report.	2,202.89
	I allow	10,138.60

24 Abstract B.—Subsistence.

(Page 8, and Exhibit No. 42, page 77.)

On this abstract the Commissary General recommended disallowances aggregating $17,775.13½, but the judge-advocate (with the approval of the Secretary of War) disallowed only items as follows:

Vouchers missing	$2,615.79½
Vouchers not receipted	11,575.59¼
Vouchers unauthorized expenditures	1,755.13
Total	15,945.51¾

The amount stated as $11,575.59¼ is in fact only $9,434.90. The item of $2,140.69 (E. G. Rogers & Co.), and which was made to swell this amount has no existence. There was no such item on the State's Voucher No. 53 (No. 1 miscellaneous). Hence so much of this amount ($11,575.59) was without any other foundation than some clerical mistake. Referring to the residue ($9,434.90) in said amount, and also to the bill of $2,120.56 (E. G. Rogers & Co.), included in the sum of $2,614.79½ above, I consider that these items should be allowed. There is no room for doubt in any case that the supplies had been actually purchased by and delivered to the State, and had been used by the State in subsisting troops. On all these points the evidence is clear. The presumption of payment is so strong that I do not feel justified in excluding the items because technical receipts are not produced. Excepting about $50.00 in small items the two amounts represent purchases in large quantities by the State Officers on account of the State, from two firms in New Orleans, viz: Post and Mell, and E. G. Rogers & Co. The presumption is very strong that these merchants did not neglect to ask and receive payment of these large bills. The purchasing officers duly rendered their accounts to the State, and these items were included therein as bills which had been paid. Indeed, in one case (Voucher 49) it clearly appears that the State commissary had drawn $2,000 from the Governor and had sent it in advance to Post and Mell to make purchases.

25 Where, as in this case, the United States is liable only to the State, and in no event to the vendors, there is no occasion for extreme strictness in insisting on the production of technical and formal evidence of the discharge of the debts. It is sufficient that presumption puts it beyond reasonable doubt that the State did actually pay those from whom it made the purchases. I therefore allow the items $11,575.59 and $2,120.56.

Claimed by the State on this Abstract	$23,474.90
Errors in Vouchers to be added	361.54
Correct Total of Abstract	23,836.44
I disallow for reasons stated in War Department Report.	2,249.37
I allow	21,587.07

Abstract C.—Forage.

(Page 9, and Exhibit No. 45, Page 83.)

On this abstract are four items, $636.85, $641.72, $324.00 and $350.12 for purchases of forage from Post and Mell and E. G. Rogers

and Co. These items were embraced in the same bills with the items for subsistence bought from them (see Abstract B), and the remarks above made respecting the subsistence items apply here. I allow these items amounting to $952.69. I also allow sundry items $3, $19.09, $11.66, $19.12, $23.91, and $23.91, aggregating $100.69 for which there are no formal receipts, but where the evidence of purchase and use by the State is substantial.

In the total allowed by the War Department on the forage abstract was included an item of $4,293.52, paid to A. L. Caruthers for corn and fodder for Captain H. D. Dyche's Company, in the period from July 22, 1849, to October 27, 1849.

The allowance was doubtless made through oversight. Probably the fact of the payment being made in October, 1859, misled the examiner into a supposition that the service was in 1859, whereas it was ten years earlier. The Act of March 3, 1881, relates
26 only to expenditures incident to the suppression of Indian hostilities between December 1, 1855, and January 1, 1860. I exclude the amount here and consider it in the separate claim for expenditures in 1849.

Claimed by the State on this Abstract	$42,279.52
Errors in Vouchers to be added	56.00
	42,335.52
Errors in Vouchers to be deducted	30.90
	42,304.62
Item of 1849 Expenditures deducted	4,293.52
	38,011.10
I disallow for reasons stated in War Department Report	5,581.50
I allow	32,429.60

Abstract G.—Ordnance.

(Page 10 and Exhibit No. 49, Page 94.)

I consider that items $156.50 and $163.40 (Vouchers 24 and 61), Purchases of Post and Mell and E. G. Rogers & Co., should be allowed. The evidence is substantial that the State bought, received and paid for the ordnance.

Claimed by the State on this Abstract	$808.43
I disallow for reasons stated in War Department Report	300.63
I allow	507.80

Abstract H.—Contingencies.

(Page 10 and Exhibit No. 45, Page 89.)

Item of $310.75, which it is claimed was paid by General Jesse Carter. The bill of lading is not intelligible. In the body thereof the items are stated, and aggregate $310.75, but in the heading it is recited that the entire freight (to be paid by General Carter) is $190.23; also in a note therein the master of the boat was directed by Post and Mell (the shippers) to collect the $190.23 from General Carter, or if he failed to pay that sum, to reserve certain parts of the cargo for sale to pay said freight. As the evidence stands, it does not seem that Carter paid more than $190.23, and I allow only
27 that sum. I also allow items $65.36, $122.07, $1.65, $289.50, and $177.97 of item $198.10 ($20.13 having been allowed in subsistence account, (Abstract B). The evidence is fully satisfactory that Post and Mel, and E. G. Rogers & Co. sold the goods to the State, shipped them to Florida, and were reimbursed by the State the freight thereon.

Claimed by the State on this abstract	$10,332.84
I disallow for reasons stated in War Department Report.	470.25
I allow	9,862.59

Abstract I.—Stationery.

(Page 10 and Exhibit No. 45, Page 90.)

For reasons stated respecting subsistence (Abstract B), items $44,10 and $50.00 are allowed.

Claimed by the State on this abstract	111.11
I disallow for reasons stated in War Department Report.	6.91
I allow	104.20

Exhibit 1.

Summary of Third Auditor's Allowances for "Pay of Troops" from December 1, 1855, to January 1, 1860 (Abstract A).

Company.	No. of roll.	Period of service.		Amount claimed.	Amount allowed.
		From—	To—		
William B. Hooker	1	Jan. 3, 1856	Feb. 21, 1856	$4,809.57	$4,557.01
F. M. Durance	2	Feb. 21, 1856	Aug. 22, 1856	15,794.91	15,416.21
Do	3	Aug. 22, 1856	Dec. 21, 1856	8,693.00	9,567.92
William H. Kendrick	4	Feb. 26, 1856	Aug. 28, 1856	16,277.39	16,158.46
Do	5	Aug. 28, 1856	Dec. 6, 1856	8,906.50	8,832.11
A. D. Johnson	6	Feb. 26, 1856	Sept. 2, 1856	16,739.85	16,459.36
Do	7	Sept. 2, 1856	Dec. 20, 1856	8,833.93	8,706.46
Leroy G. Leslie	8	Mar. 12, 1856	Aug. 20, 1856	14,108.34	13,740.30
28					
A. J. T. Wright	9	Apr. 28, 1856	May 17, 1856	574.68	544.49
Do	10	May 18, 1856	Aug. 1, 1856	9,667.71	9,566.96
John McNiell	11	May 15, 1856	Sept. 30, 1856	2,059.45	2,004.05
Asa A. Stewart	12	May 18, 1856	Sept. 30, 1856	11,510.89	11,492.31
Robert Youngblood	13	May 18, 1856	Sept. 30, 1856	5,804.18	5,698.05
Enoch Daniel	14	May 30, 1856	July 20, 1856	1,994.82	1,981.85
Wm. B. Hardee	15	June 1, 1856	July 29, 1856	180.14	179.84
Alexander Bell	16	June 24, 1856	Sept. 30, 1856	3,526.62	3,411.61
Thomas Hughey	17	Aug. 18, 1856	Sept. 30, 1856	784.40	781.02
E. T. Kendrick	18	Oct. 23, 1856	Jan. 14, 1857	3,243.36	3,199.16

Summary of Third Auditor's Allowances, etc.—Continued.

Company.	No. of roll.	Period of service.		Amount claimed.	Amount allowed.
		From—	To—		
John Addison	19	April 8, 1856	Oct. 7, 1856	10,232.43	10,232.43
John Parker	20	Oct. 7, 1856	Dec. 15, 1856	4,556.59	4,088.98
John McNeill	21	Not Stated on Abstract		3,303.06	3,237.00
S. Sparkman	22	do		2,967.31	2,907.96
R. B. Sullivant	23	do		809.15	809.15
Field & Staff	26½	do		12,341.49	10,138.60
Total				168,720.37	163,645.79

Amount disallowed: $252.56, 378.70, 125.08, 119.53, 74.39, 280.19, 127.47, 368.04, 30.19, 100.75, 55.40, 18.58, 106.13, 12.97, 1.10, 115.01, 3.38, 44.20, . . . 532.61, 66.06, 59.35, . . . 2,202.89.

Total amount disallowed $5,074.58

Exhibit 2.

General Summary of Third Auditor's Allowances on Items Pertaining to Indian Hostilities, 1855–'59.

Abstract.	For what purpose	Amount of claim.	Amount allowed.	Amount disallowed.
A	Pay of Troops.....	$168,720.37	$163,645.79	$5,074.58
B	Subsistence.....	23,836.44	21,587.07	$2,249.37
C	Forage.....	42,304.62	32,429.60	"9,875.02
D	Transportation....	19,843.28	17,286.89	2,556.39
E	Camp & Garrison Equipage.....	193.81	98.59	95.22
29				
F	Quartermasters' Stores.....	589.67	395.16	194.51
G	Ordnance.....	808.43	507.80	300.63
H	Contingencies.....	10,332.84	9,862.59	470 25
I	Stationery.....	111.11	104.20	6.91
K	Medical & Hospital Stores.....	1,362.83	508.82	854.01
	Total.....	268,103.40	246,426.51	21,676.89

Note.—Abstract K includes accounts of J. M. Cooper, J. A. Jerrard, Fred K. Lykes, and Perry G. Wall for $7.50, $22.00, $5.90, and $31.25 respectively. (See Colonel Barr's report, pages 91 and 96.)

The sum of $1,514.52 of the amount disallowed is for subsistence of Captain Dyche's Company in 1849, and is commented on under head of expenditures for that period.

" Items $150.00, $4,410.77 and $4,293.52 of the amount disallowed are for forage for troops in 1849, and are commented on under head of expenditures for that period.

Exhibit 3.

Summary of Sales of Military Stores (Subsistence, Forage, etc.), as Shown by Returns of Jesse Carter, Special Agent.

Date.	Amount.	Date.	Amount.
Oct., 1856.....	$80.00	Jan., 1857.....	$24.55
Nov., 1856.....	26.27	First Quarter, 1857...	499.48
Dec., 1856.....	660.38		
Jan., 1857.....	114.97	Total.....	1,405.65

Claim for Expenses in 1849.—*Detailed Statement.*

Large payments have already been made to the State on account of expenses incurred in 1849. But upon careful examination it is found that they did not include any of the items embraced in the present claim. The Acts of June 30, 1851, and March 3, 1857, under which such payments were made, did not permit the consideration of any items unless payment thereof had actually been made by the State. As the State had not been paid the items in this claim (and did not pay them until 1859), it was not able to include them in the previous claims.

The claim is as follows:

Voucher 24 A.—Captain H. D. Dyche's Company, July 22, to October 27, 1849	$4,786.43
25 A.—Captain A. Jernigan's Company, July 22 to October 23, 1849	4,929.48
26 A.—Captain J. O. Devall's Company, July 24 to October 24, 1849	1,601.00
53 B.—A. L. Caruthers, Subsistence, July 22 to October 27, 1849	1,514.52
77 C.—S. L. Sparkman, forage	150.00
79 C.—A. Jernigan, forage	4,410.77
79 C.—A. L. Caruthers, forage	4,293.52
Total	21,685.72

Vouchers No. 24 and 25 A.

The aggregate paid by the State to Captain Dyche's Company and Captain Jernigan's Company is not in excess of what would have been paid by the United States for similar companies for the same time. I therefore allow the items in full.

Voucher No. 26 A.

Of the Aggregate claimed to have been paid by the State to Captain Devall's Company, three privates, whose pay is stated at $70.50 each, do not sign receipts, and there is no evidence upon which to base an allowance. Disallowing these items, I allow the balance $1,389.50.

Voucher No. 53 B.

The item is cost of subsistence for Captain H. D. Dyche's Company of Sixty-nine men for ninety-five days. The articles purchased are component parts of a ration, and the prices charged appear reasonable. I therefore allow the item $1,514.52 in full. The State has produced no vouchers and has claimed no reimbursement for subsisting the other two companies.

31 Voucher No. 77 C.

In respect to this item of $150.00 for forage there is no voucher, and no data whatever on which to base an allowance. I therefore exclude it.

Voucher No. 79 C (Part).

This item is said to be cost of forage for Captain Jernigan's Company. The same general remark applies in this case as is noted in regard to Voucher 77 C above, and the amount is disallowed.

Voucher No. 79 C (Part).

For cost of forage (corn and fodder) for Captain Dyche's company between July 22, 1849, and October 27, 1849, $4,293.52. The prices paid I think may be accepted as reasonable, and I allow the item claimed. The State has presented no vouchers for forage furnished Captain Jernigan's Company or Captain Devall's Company.

EXHIBIT #4.

General Summary of Third Auditor's Allowances on Items Pertaining to Indian Hostilities in 1849.

For what purpose.	Amount of claim.	Amount allowed.	Amount disallowed.
Captain H. D. Dyche's Co.....	$4,786.43	$4,786.43	$.....
Capt. H. A. Jernigan's Co.....	4,929.48	4,929.48	
Capt. J. O. Devall's Co.	1,601.00	1,389.50	211.50
A. L. Caruthers Subsist.....	1,514.52	1,514.52	
S. L. Sparkman forage.....	150.00	.....	150.00
A. Jernigan forage.....	4,410.77	.....	4,410.77
A. L. Caruthers Forage.....	4,293.52	4,293.52	
	21,685.72	16,913.45	4,772.27

32 EXHIBIT E.

Letter of Governor Perry.

Wailes' Commission.

STATE OF FLORIDA, EXECUTIVE OFFICE,
TALLAHASSEE, *August 28th*, 1888.

Hon. William C. Endicott, Secretary of War, Washington, D. C.

SIR: Under date of July 16th, 1879, George F. Drew, then Governor of the State of Florida, issued a commission to S. I. Wailes,

of Washington City, in the following form: "Know all men by these presents that I, George F. Drew, Governor of the State of Florida, reposing especial trust and confidence in the ability, fidelity and prudence of Sydney I. Wailes, do hereby constitute and appoint the said Sydney I. Wailes, Agent for the State of Florida, before the Departments at Washington City, and to ask and demand and receive of the Government of the United States any and all sums of money due the said State of Florida for expenses incurred by said State on account of Indian Hostilities in said State from the year 1849 to the year 1856 inclusive.

The said Wailes to receive as compensation for performing the above work fifteen per cent of the sums collected from the General Government upon such Indian War Claims and to defray all expenses incurred in the prosecution of the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of Florida to be attached, this 16th day of July, A. D. 1879.

[SEAL.] GEORGE F. DREW, *Governor.*

Attest:
W. D. BLOXHAM,
Sec. State.

I hereby certify that said appointment or commission has not been revoked or cancelled, and I would therefore request you
33 to allow the said Wailes access to whatever papers in your Department it may be necessary for him to examine and to give him permission to file such papers as may be needful and proper in the settlement of said claims.

In testimony whereof I have hereunto set my hand and caused the Great Seal of the State of Florida to be hereunto affixed. Done at the Capital, this 28th day of August, A. D. 1888.

[SEAL.] (Signed) E. A. PERRY, *Governor.*

By the Governor.

Attest:
JOHN L. CRAWFORD,
Sec. State.

EXHIBIT F.

Letter of Governor Fleming.

STATE OF FLORIDA, EXECUTIVE OFFICE.
TALLAHASSEE, *March* 28, 1889.

Hon. William Windom, Sec. of the Treasury, Washington, D. C.

SIR: By the 5th section of the Deficiency Bill, approved March 2nd, 1889, provision is made for the examination by the Treasury Department of the claim of the State of Florida, as reported in the

letter of the Secretary of War, dated May 22, 1882, and a report thereon to the next regular session of Congress, and in connection therewith a report of the amount of all claims in favor of the General Government against the State of Florida, and the Statement of an account between the General Government and said State.

As in that examination evidence may be required, and, possibly, some now in the files of this State, I hereby respectfully request that permission be given Mr. S. I. Wailes, the Agent of this State upon this claim, to file such papers and evidence as may be necessary, and to do all other necessary acts required, by your Department, of this State in said examination.

34 Hoping that it may suit your convenience to enter upon this examination at an early day, I remain,

Respectfully your obedient servant,

(Signed) FRANCIS P. FLEMING,
Governor of Florida.

EXHIBIT No. 1.

His Excellency, Francis P. Fleming, Tallahassee, Florida.

DEAR SIR: As the 51st Congress has closed its session, I desire to report herewith the condition of the claim of the State of Florida for Indian War expenses advanced by the State on Indian wars, for 1849 to 1857 inclusive. By section 5 of the Deficiency Act of March 2, 1889, (25 Statutes p. 939) the Secretary of the Treasury stated the amount between the United States and the State of Florida and reported the same to the House of Representatives December 18, 1889.—See Ex. Doc. No. 68, 51st Congress, 1st Session, Exhibit A.

By that Statement (see page 3) he finds the amount due the State, January 1st, 1890	$848,667.16
Less principal of bonds and interest	280,712.66
Cash balance due the State	$567,954.50

Also $132,000 of State Bonds.

This statement shows that when $92,648.09 was offered the State as a full settlement in 1882, (which, as the State's Agent, I recommended Governor Bloxham not to accept) the action in refusing was correct, as the amount proffered was not one-ninth of what was then due, as the present report shows.

The above report, made by an auditor, and endorsed by the Secretary of the Treasury, was the same kind of report on which the States of Georgia, Texas, Missouri, and others had been

35 paid but the Committee on Appropriations was so anxious to get rid of placing such a sum on the appropriation bill, as had been done in past Congresses for other States, that on the 21st of January, 1890, (Cong. Record Vol. 29, Page 710) they came into the House of Representatives and by their Chairman, Mr. Cannon, moved that the letter and statement of the Secretary

of the Treasury be referred to the Committee on claims, for the reason that it had not been passed upon by the proper Comptroller of the Treasury, and was not, technically an audited claim.

On the 15th of April, 1890, the Hon. Mr. Davidson offered (Bill H. R. 9347, Exhibit B) which he had prepared and which was sent to the Committee on Claims. You will recollect that you were here at the time, and that an effort was then made to get the claim out of the Committee on Claims and send it back to the Secretary of the Treasury to be reported upon by the Comptroller, but after a conference between Messrs. Davidson and Bullock and yourself, Mr. Davidson went into the House and had an interview with some of his friends and came back and reported it was against the rules and could not be done, and nothing was done until last month, when, meeting Hon. Charles Dougherty here and, knowing his great interest in the claim—he having twice reported it, from the Committee on Claims, when in Congress, and once succeeded in getting it passed in the House, I stated to him its condition and that if it was allowed to sleep in the Committee, it would be almost impossible to secure its passage by the next Congress. He promptly said he would see what he could do with it. He went to the House of Representatives and found that the Committee on Claims had adjourned for the Session, but the Chairman, Mr. Laidlaw, called the Committee together again to hear him (Mr. Dougherty) personally on the case. This was done on February 17th, and the same day a report prepared by Mr. Dougherty was offered in the House by Mr. Laidlaw (H. R. Report 3839, Exhibit C) and the papers again sent to the Secretary of the Treasury, from whom a report made by the Comptroller may be expected to the next Congress.

In addition to the foregoing, on March 10, 1890, Senator
26 Pasco offered a bill (S. 3044, Exhibit D) carefully prepared by himself which was referred to the Senate Committee on Claims, and, on July 25, 1890, the Senator, from the said Committee, made an elaborate report (S. Report 1539, Exhibit E) on the same. The bill and report have remained upon the Senate Calendar ever since, having come up once in their order, on September 21st, 1890, and been passed on without prejudice.

I have the honor to be

Very respectfully, your obedient servant,

COMMISSIONER OF THE STATE OF FLORIDA.

EXHIBIT NUMBER 2.

WASHINGTON, D. C., *March* 30, 1893.

His Excellency, Henry L. Mitchell, Tallahassee, Fla.

DEAR SIR: In accordance with my usual practice, I beg herewith to submit a report of the proceedings of the 52nd Congress in relation to the Florida Claim for moneys advanced by the State for the suppression of Indian Hostilities from 1849 to 1857 inclusive, amounting on January 1, 1890, to $848,667.16 less the principal and interest of bonds due the Indian Trust Fund, amounting to

$280,712.66 leaving a cash balance due the State up to that time (January 1, 1890) of $567,954.50.

On the convening of the 52nd Congress I took occasion to strongly impress upon Messrs. Bullock and Mallory the great advantage of securing a place for one of the Representatives of the State on the Committee on Claims of the House of Representatives, so that the merits of this bill could be thoroughly explained to the Committee by its friends and the Representatives of the State, and when the Committees were announced General Bullock had been assigned to that important Committee.

On February —, 1892, Mr. Mallory offered the bill (H. R. 82, Exhibit A) and moved the reference thereof to the Com-
37 mittee on Claims of the House (Cong. Record, Page 45 Exhibit) and General Bullock succeeded in having the same referred to himself as a sub-committee, and on February 12th, he reported the bill back to the House (H. R. Report No. 273, Cong. Record, p. 1113, Exhibits B and C) and it was duly referred to the Committee of the whole House and ordered to be printed and placed upon the Calendar.

On February — Senator Pasco introduced a similar bill to the above, (S. No. 1391, Exhibit D) in the Senate (Cong. Record p. 160 Exhibit —) which was referred to the Committee on Claims of that Body, of which the Senator is a member, and to whom the bill was referred as a sub-committee. The bill was promptly reported back to the Senate by Mr. Pasco (S. Report No. 198, Exhibit E) and went upon the Calendar of that Honorable Body, and on April 13th, 1892, it was taken up in its order and promptly passed. (Cong. Record, page 3509, Exhibit F).

The Senate Bill was duly sent to the House of Representatives and on the request of General Bullock was laid on the Speaker's Table (Cong. Record Page 3585 Exhibit C) which proceeding was the only one by which it could be called up by the General at any time in the future when he should obtain recognition.

With the bill in this condition it seemed to me practicable to pass it during the first session of the Congress, and I entered into a correspondence with your predecessor, Governor Fleming, urging his presence here and that the bill could become a law before the adjournment. The Governor was finally prevailed upon to come on the first of July last, and we immediately entered into a systematic effort to canvass the House, member by member, explaining, expounding and exhorting until there seemed to be no chance of failure.

But the Committee on Rules of the House of Representatives, while admitting the justice of the claim and the right of the State to recognition, declined to allow a day for consideration, at that time, promising to do so at the short session.

38 The Committee kept faith with the friends of the bill and did give a day, viz: Saturday the 17th of December, (Cong. Record page 166 Exhibit H) but unfortunately, being a Saturday and just before the Christmas Holidays when it was almost impossible to get a quorum, the only course left open was to discuss the

bill, its history and the merits thereof, which was done in the Committee of the whole House for more than three hours. But for reasons which we were — are unable to fathom, it seemed impossible during the whole remainder of the session to again secure recognition, though great and persistent efforts were made to do so; in fact, General Bullock and Mr. Mallory got up a petition, which was signed by more than a majority of the House, asking for an hour in which to take the vote, but none was given.

In this connection I wish to say that the speech of General Bullock at the time of the consideration of the bill was so full, and showed such minute personal knowledge of the subject of the same, that I have secured and send you herewith a number of copies with the request that they may be distributed among the members of the Legislature.

On the 3rd instant, Senator Pasco was able, by his adroit management and sound logic, against the adverse efforts of the managers of the Deficiency Appropriation Act to have the Florida Bill accepted as an amendment thereto, which was only accomplished after a warm and interesting debate, in which Senator Pasco was assisted by Mr. Hoar (Cong. Record page 2583 Exhibit —). The Deficiency Act went over to the House of Representatives in the small hours of the 3rd instant, and after a vain attempt by Messrs. Bunn and Mallory to secure a separate vote on the amendment of Mr. Pasco, (Cong. Record page 2603 Exhibit I) the act in its entirety was consigned to conference committee, in which the amendment was swept away together with many others.

While I naturally deplore the fate which has thus once more attended our efforts, I find many sources of comfort in the present status of the bill, chief among which is the fact that, thanks largely to General Bullock, the subject and history of the Claim are
39 more generally and thoroughly understood in the House, and the right of the State to re-imbursement is more fully recognized and conceded than ever before, and I am full of hope that the next Congress may agree to settle the long delayed mutual account.

I am sir, with great respect,

Your obedient servant,

S. I. WAILES,
Agent for the State of Florida.

On the 10th day of October, A. D. 1910, the Court made the following ruling upon Plaintiff's petition for Writ of Mandamus:

In the Second Judicial Circuit of Florida, in the Circuit Court for Leon County.

THE STATE OF FLORIDA ex Rel. SIDNEY I. WAILES
vs.
A. C. CROOM, as Comptroller of the State of Florida.

This cause was heard upon the Petition of the plaintiff for an alternative Writ of Mandamus and upon consideration thereof it

was ordered that the said Writ be and the same is hereby refused, and that said petition be dismissed.

Done and ordered this 10th day of October, A. D. 1910.

JOHN W. MALONE, *Judge.*

The plaintiff by his attorneys except to the above order which is hereby noted. Oct. 10, A. D. 1910.

JOHN W. MALONE, *Judge.*

On the 8th day of April, A. D. 1911, the plaintiff filed his Præcipe with the Clerk of the Circuit Court for Leon County, for Writ of Error, in the words and figures following:

40 In the Circuit Court, Second Judicial Circuit, Leon County, Florida.

STATE OF FLORIDA on the Relation of SYDNEY I. WAILES
vs.
A. C. CROOM, as the Comptroller of the State of Florida.

The Clerk of the above entitled Court will please issue a writ of Error, in the above entitled cause, as required by law for taking Writs of Error from the Circuit Court to the Supreme Court of the State of Florida, and make the said Writ of Error returnable in the Supreme Court of the State of Florida on the 2nd day of June, 1911.

Yours very truly,

CLARK & FIELDING,
Attorneys for Sydney I. Wailes.

On the 8th day of April, A. D. 1911, Writ of Error issued, which was duly recorded in the Minutes of the Circuit Court in Minute Book No. 12, Page 218, on the 8th day of April, A. D. 1911.

The record of said Writ of Error is in the words and figures following, to-wit:

STATE OF FLORIDA, *ss:*

The State of Florida to the Judge of the Circuit Court of the Second Judicial Circuit of the State of Florida, Greeting:

Because in the record and proceedings and also in the rendition of judgment in a certain cause which is in our said Circuit Court before you, between the State of Florida on the relation of Sydney I. Wailes as plaintiff and A. C. Croom as Comptroller of the State of Florida as Defendant, manifest error hath happened, as it is said, to the great damage of the said State of Florida on the relation of Sydney I Wailes as by his complaint appears; we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment is therein rendered, you distinctly and

openly send the record and proceedings aforesaid with all
41 things touching them, under your seal, together with this Writ, to our Supreme Court of the State of Florida, so that you have the same at Tallahassee on the second day of June, A. D. 1911, in our said Supreme Court to be then and there held, that inspecting the record and proceedings aforesaid, our said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law should be done.

Witness the Honorable James B. Whitfield, Chief Justice of the said Supreme Court, and the seal of the said Circuit Court, this 8th day of April, in the year of our Lord one thousand nine hundred and eleven.

[SEAL.]

HENRY T. FELKEL.
Clerk of the Circuit Court of Leon County.

On the 31st day of May, A. D. 1911, Petitioner filed herein the following Assignment of Errors:

In the Circuit Court, Second Judicial Circuit, Leon County, Florida.

STATE OF FLORIDA on the Relation of SYDNEY I. WAILES
vs.
A. C. CROOM, as the Comptroller of the State of Florida.

Assignment of Errors.

Now comes the plaintiff and assigns the following errors in the ruling, order, decision and judgment of the Judge of the Circuit Court in the above entitled cause, to-wit:

1. The Court erred in making the Order of October 10th, 1910, denying the petition for alternative Writ of Mandamus.

2. The court erred in making the Order of October 10th, 1910, dismissing the petition for alternative Writ of Mandamus.

Wherefore Plaintiff prays that said orders be reversed, and that the Circuit Court be directed to issue the alternative Writ of Mandamus, and for such other relief as he may be entitled to have.

CLARK & FIELDING,
Attorneys for the Petitioner.

42 On the 27th day of May, 1911, I accept service of a copy of the above Assignments of Error.

PARK TRAMMELL,
Attorney General for Florida.

On the 27th day of May, 1911, I accept service of a copy of the above Assignments of Error.

A. C. CROOM,
Comptroller for State of Florida.

On the 31st day of May, A. D. 1911, the Plaintiff filed the following Written Directions to the Clerk:

In Circuit Court, Second Judicial Circuit, Leon County, Florida.

STATE OF FLORIDA on the Relation of SYDNEY I. WAILES
vs.
A. C. CROOM, as the Comptroller of the State of Florida.

Directions for Making Up Transcript of Record.

The Clerk of the above Court will, on the 15th day of June, 1911, commence making up the Transcript of Record in the above cause for the Supreme Court of Florida, and said Clerk, in making up said Transcript, will copy therein the following papers, to-wit:

1. Petition for alternative Writ of Mandamus and all Exhibits thereto attached.
2. The order refusing the Alternative Writ of Mandamus and the Exception thereto.
3. The Praecipe for Writ of Error.
4. The Writ of Error.
5. The Assignments of Error.
6. These directions.

There are no papers or proceedings in the said cause that the Clerk shall omit from the Transcript of Record.

CLARK & FIELDING,
Attorneys for the Petitioner.

43 On the 27th day of May, 1911, I accept service of a copy of the above Directions to the Clerk.

PARK TRAMMELL,
Attorney General for Florida.

On the 27th day of May, 1911, I accept service of a copy of the above Directions to the Clerk.

A. C. CROOM,
Comptroller for State of Florida.

In the Circuit Court of Florida, Second Judicial Circuit, Leon County, Florida.

STATE OF FLORIDA on the Relation of SYDNEY I. WAILES
vs.
A. C. CROOM, as the Comptroller of the State of Florida.

Certificate of Clerk.

I, Henry T. Felkel, Clerk of the Circuit Court in and for the County of Leon, State of Florida, do hereby certify that the foregoing pages Numbered from One to Forty-six, inclusive, contain a correct Transcript of the record of the judgment in the case of State of Florida on the relation of Sydney I. Wailes, plaintiff, against

A. C. Croom as the Comptroller of the State of Florida, defendant, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the records and files of my office, that have been directed to be included in said transcript by the written directions of the said parties.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Circuit Court, this 19th day of June, A. D. 1911.

[SEAL.] HENRY T. FELKEL,
Clerk of the Circuit Court for the County of Leon.

44 In the Supreme Court of Florida, June Term, A. D. 1911, En Banc.

THE STATE OF FLORIDA on the Relation of SYDNEY I. WAILES, Plaintiff in Error,
vs.
A. C. CROOM, as Comptroller of the State of Florida, Defendant in Error.

Leon County.

Mandamus.

Statement.

The plaintiff in error, Sydney I. Wailes, on the 10th day of October, 1910, filed his petition for an alternative writ of mandamus against A. C. Croom as Comptroller of the State of Florida, in the following words and figures:

"To Honorable John W. Malone, the Judge of the Circuit Court for the Second Judicial Circuit of Florida:

The State of Florida, on the relation of Sydney I. Wailes, brings this petition against A. C. Croom as the Comptroller of the State of Florida, and, thereupon petitioner showeth: That the Legislature of the State of Florida, by an Act approved on the 2nd. day of March, 1877, authorized and empowered the Governor of the State of Florida 'to appoint an agent to adjust and settle all claims between the State and the United States Government, growing out of the war with the Seminole Indians in the years 1856 and 1857, as well as other claims that may exist between the two governments.' That by another Act of the Legislature of the State of Florida, approved on the 11th. day of March 1879, the Governor of the State of Florida was 'authorized and empowered to appoint a commissioner with power to proceed to Washington and adjust the claims of the State of Florida against the United States.' A copy
45 of the said Act of the Legislature of the State of Florida, approved March 2nd, 1877, and of section 5 of said act of the Legislature approved March 11th, 1879, are set out at large in the Exhibit to this Petition attached and called 'Statement of account,'

which said 'Statement of Account' is made part of this Petition the same as if fully set out herein.

That under and by virtue of the aforesaid Laws of the State of Florida, George F. Drew, who was then the Governor of the State of Florida, on the 16th day of July, 1879, constituted and appointed Sydney I. Wailes 'Agent for the State of Florida to represent the said State of Florida before the Department of the General Government at Washington City, and to ask, demand and receive of the Government of the United States, any and all sums of money due the State of Florida for expenses incurred by said State on account of Indian hostilities in said State from the year 1849 to the year 1856 inclusive,' and for the work to be done and services to be performed by said Sydney I. Wailes, under his appointment as agent for the State of Florida, he was to receive 'as compensation for performing the above work, fifteen per cent of all sums collected from the General Government upon such Indian War Claims, and to defray all expenses incurred in the prosecution of the same.' That under and by virtue of a resolution passed by Governor George F. Drew and his Cabinet, on the 9th day of August, 1879, the foregoing appointment was amended so as to include in the said appointment the year 1857. A copy of both the said appointment, and the said resolution of the Governor and his Cabinet are set out at large in the Exhibit to this Petition attached and called 'Statement of Account,' which said 'Statement of Account' is made part of this petition the same as if fully set out herein. And from the said year 1879 to the year 1901 every Governor of the State of Florida recognized, acquiesced in and endorsed the appointment of petitioner as such Agent for the State of Florida to perform the services hereinbefore mentioned, and no question as to the right or authority of petitioner to so represent said State of Florida and to perform the services before mentioned was raised during the period of time before mentioned. And, from time to time, during the period of time from 1879 to 1901, petitioner made reports to the different Governors of Florida touching and concerning the matters entrusted to him as said Agent for said State of Florida, setting out in his said reports to the said Governors what had been done
46 with said matters so entrusted to him.

That said Sydney I. Wailes accepted the aforesaid appointment as 'Agent for the State of Florida' and, immediately after having received the said appointment, he began work thereunder, and he employed a force of clerks and other assistants, and he devoted himself assiduously to the said work, and he finally succeeded in having the claims or accounts between the State of Florida and the General Government of the United States on account of the said Indian hostilities in said State of Florida from the year 1849 to the year 1857 inclusive, duly audited, determined and settled by the Treasury Department of the United States Government under the date of December 16th, 1889, as is fully shown by Executive Document Number Sixty-Eight, Fifty-first Congress, House of Representative, First Session. A copy of which said Executive Document #68 is set out at large in the Exhibit to this petition attached and

called 'Statement of Account,' which said 'Statement of Account' is made part of this petition the same as if fully set out herein. That when petitioner had succeeded in having the said claims or accounts between the State of Florida and the General Government of the United States, on account of Indian hostilities in said State of Florida from the year 1849 to the year 1857 inclusive, determined and settled he had done all that he had contracted to do or that he could do or perform under his said appointment as Agent for the State of Florida, and there remained nothing further that he could do or perform under the said appointment as Agent for the State of Florida, and that the only thing that remained to be done after he had succeeded in getting audited, determined and settled the aforesaid claims or accounts between the State of Florida and the General Government of the United States was the passage of a bill by the Congress of the General Government of the United States making an appropriation to pay to the State of Florida the money found to be due said State under the said audited, determined and settled account aforesaid. Yet though petitioner had done
17 everything that he had contracted or been appointed to do, he remained in the City of Washington, giving to the Florida delegation in Congress the benefit of his long experience in matters of legislation with reference to the presentation of like matters to Committees of Congress, the drafting of bills and appropriate amendments and other like matters, looking to the final passage of appropriate legislation carrying into effect the Statement of account made by the Secretary of the Treasury, and the appropriation of the necessary funds to pay the State of Florida the large amount of money found to be due said State, and, on account of petitioner's wide acquaintance with Representatives and Senators in Congress, his said services so rendered were very valuable to the said Florida delegation in Congress in the manner so stated.

That the Congress of the United States accepted the determined, audited and settled accounts between the General Government of the United States and the State of Florida, on account of Indian hostilities in said State of Florida, from the year 1849 to the year 1857 inclusive as stated by the Treasury Department of the United States in Executive Document #68, which said determined, audited and settled accounts were procured through the perseverance, labor and skill of petitioner; and by an Act of Congress of May 27th, 1902, the Treasury Department of the United States was authorized to settle the mutual account heretofore stated between the United States and the State of Florida, under the authority of an Act of Congress, according to the *mode* of settling the same, found near the foot note at the third page of the letter of the Secretary (of the Treasury) submitting his report dated December 16th, 1889, published as Executive Document Number Sixty-eight, Fifty-first Congress, First Session by continuing the computation of interest to the date of settlement and ascertaining the balance due the said State. And the State of Florida received, by virtue of the aforesaid Act of Congress, the sum of One Million Eighty-nine Thousand One Hundred and Fifty-eight Dollars and Sixty-six Cents ($1,089,-

158,66) in cash and in securities of the State held by the General Government of the United States, on account of said Indian Hostilities in said State of Florida from the year 1849 to the year 1857 inclusive. And, thereupon, and because of the receipt by the State of Florida of the said sum of $1,089,158,66 from the
48 General Government of the United States on account of Indian hostilities in the State of Florida from the year 1849 to the year 1857 inclusive, the State of Florida became indebted to Petitioner in the sum of $163,373,80 which is 15% of the sum so received by the State of Florida as aforesaid.

That although the State of Florida has received from the General Government of the United States the said sum of $1,089,158,66 on account of Indian hostilities in said State of Florida from the year A. D. 1849 to the year 1857 inclusive, the receipt of which said sum of money was procured by petitioner in getting the claims or accounts between the State of Florida and the General Government of the United States on account of said Indian hostilities duly audited, determined and settled by the Treasury Department of the United States, petitioner has not received or been paid fifteen per cent of the said sum of money so received by the State of Florida from the General Government of the United States on account of the Indian hostilities in said State of Florida from the year 1849 to the year 1857 inclusive, nor any other sum or sums of money for or on account thereof, and there now remains due and unpaid to petitioner by the State of Florida the sum of $163,373,80, which is fifteen per cent of the said sum of money so received by the State of Florida from the General Government of the United States, on account of Indian hostilities in the State of Florida from the year 1849 to the year 1857 inclusive, with interest thereon at the legal rate from the 19th day of December, 1902.

That on the 14th day of September, 1910, petitioner duly made out his account against the State of Florida for the money due to him for his services as Agent for the State of Florida, under his appointment as Agent for the State of Florida, in having audited, determined and settled the claims or accounts between the State of Florida and the General Government of the United States on account of Indian hostilities in the said State of Florida from the year 1849 to the year 1857 inclusive, and he, in person, presented his said account against the said State of Florida, for his services as aforesaid, to A. C. Croom, who is, and was on that date, the Comptroller of the State of Florida, and he requested the said
49 Comptroller of the State of Florida to examine, audit and settle his said account against the State of Florida, but the said Comptroller refused to receive said account of petitioner, and the said Comptroller refused to examine, audit and settle petitioner's said account, although he, the said Comptroller, is required to do so by the Laws of the State of Florida. That a copy of the account made out and presented to the Comptroller on the 14th day of September, 1910, with all the exhibits thereto appended and which were thereto appended at the time of such presentation and demand, is attached to this petition and marked 'Statement of Account'

and is, with all exhibits thereto appended, made part of this petition.

By means whereof, and on account of the refusal of the said A. C. Croom as the Comptroller of the State of Florida, to examine, audit and settle the claim and account of petitioner against the State of Florida, petitioner is denied his right under the Laws of the State of Florida to have his said claim against the State of Florida examined, audited and settled, and is, thereby, prevented from receiving his just compensation for his services, so rendered as aforesaid, to which compensation he is justly entitled.

Wherefore, petitioner prays that a writ of Mandamus may issue, directed to said A. C. Croom as the Comptroller of the State of Florida, commanding him, forthwith, to examine, audit and settle the said claim and account of petitioner so arising under the Laws of the State of Florida, as by Statute in such case it is made and provided; and that such further order may be made in the premises as justice may require.

CLARK & FIELDING,
Attorneys for Petitioner.

STATE OF FLORIDA,
County of Duval:

Personally appeared before the undersigned authority, Sydney I. Wailes, who, being duly sworn, says that he is the relator in the above and foregoing petition for mandamus; that he is acquainted with the contents of said petition and with all the matters and things therein set forth and alleged, and that such things and matters are of his own knowledge true as therein set
50 forth.

SYDNEY I. WAILES.

Sworn to and subscribed before me this the 21st day of September, A. D. 1910.

[NOTARIAL SEAL.] ALEXANDER RAY,
Notary Public, State of Florida at Large.

My Commission Expires Feb. 6th, 1913."

To this petition is appended as a part thereof a statement of account which is in accordance with the statement of the petition, and an affidavit of Wailes setting forth the services rendered by him.

The following Exhibits, A, B, and C, are attached to the petition as parts of it:

Exhibit A.

Chapter 3030 (No. 54).

An Act to Provide for the Settlement of Claims Between the State of Florida and the United States.

The people of the State of Florida, represented in the Senate and Assembly do enact as follows:

Section 1. That the Governor is hereby authorized and empowered to appoint an Agent to adjust and settle all claims between the State and the United States Government, growing out of the war with the Seminole Indians in the years 1856 and 1857, as well as other claims that may exist between the two Governments.

Section 2. The expenses of such agent shall be paid out of the amount appropriated for contingent expenses of the State, and shall not exceed the sum of Eight Hundred Dollars.

Section 3. Such agent shall report to the Legislature at its next regular session.

Approved March 2, 1877.

Exhibit B.

51

Chapter 3113 (No. 15).

An Act to Provide for the Examination and Settlement of Claims Against the State of Florida for Services Rendered During the last Seminole Indian War, and for the Settlement of Claims of the State of Florida Against the United States.

The people of the State of Florida represented in Senate and Assembly, do enact ts follows:

* * * * * * *

Section 5. That the Governor is hereby authorized and empowered to appoint a Commissioner with power to proceed to Washington and to adjust the claims of the State of Florida against the United States; and the moneys paid by the United States, or so much thereof as may be necessary for that purpose, shall be and are hereby appropriated for the payment of the Certificate issued as aforesaid, and to defray the expenses of the said Board of Commissioners; and the sum of Two Thousand Dollars, or so much thereof as may be necessary, from any moneys in the State Treasury not otherwise appropriated, is hereby appropriated to defray the expenses of said Commissioner to Washington, and the incidental expenses of the said Commissioner.

EXHIBIT C.

Contract with Governor Drew.

STATE OF FLORIDA.
EXECUTIVE DEPARTMENT.

Know all men by these presents, That I, George F. Drew, Governor of the State of Florida, reposing especial trust and confidence in the ability, fidelity and prudence of Sydney I. Wailes, do hereby constitute and appoint the said Sydney I. Wailes Agent for the State of Florida to represent the said State of Florida before the Department of the General Government at Washington City, and to ask, demand and receive of the Government of the United States any and all sums of money due the said State of Florida for expenses incurred by said State on account of Indian Hostilities in said State from the year 1849 to the year 1856 inclusive.

The said Wailes to receive as compensation for performing the above work, fifteen per cent of all sums collected from the general Government upon such Indian War Claims and to defray all
52 expenses incurred in the prosecution of the same.

In testimony whereof I have hereunto set my hand and caused the Great Seal of the State to be attached this Sixteenth day of July, A. D. 1879.

[SEAL.] (Signed) GEORGE F. DREW.
Governor.

By attest:
W. D. BLOXHAM.
Sect. State."

Other exhibits are attached, being copies of documents and proceedings in the Treasury Department of the United States relating to the investigation and settlement between the State of Florida and the United States Government of claims of the State against the Government of the United States growing out of the Indian Wars in Florida in the years 1856 and 1857. There are also attached to the petition a letter from Governor Perry, and one from Governor Fleming, which are as follows:

"EXHIBIT E.

Letter of Governor Perry.

Wailes' Commission.

STATE OF FLORIDA, EXECUTIVE OFFICE,
TALLAHASSEE, *August 28th*, 1888.

Hon. William C. Endicott, Secretary of War, Washington, D. C.

SIR: Under date of July 16th, 1879, George F. Drew, then Governor of the State of Florida, issued a commission to S. I. Wailes, of

Washington City, in the following form: 'Know all men by these presents that I, George F. Drew, Governor of the State of Florida, reposing especial trust and confidence in the ability, fidelity and prudence of Sydney I. Wailes, do hereby constitute and appoint the said Sydney I. Wailes, Agent for the State of Florida, before the Departments at Washington City, and do ask and demand and receive of the Government of the United States any and all sums of money due the said State of Florida for expenses incurred
53 by said State on account of Indian Hostilities in said State from the year 1849 to the year 1856 inclusive.

The said Wailes to receive as compensation for performing the above work fifteen per cent of the sums collected from the General Government upon such Indian War Claims and to defray all expenses incurred in the prosecution of the same.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of Florida to be attached, this 16th day of July, A. D. 1879.

[SEAL.] GEORGE F. DREW,
Governor.

Attest:
W. D. BLOXHAM,
Sec. State.

I hereby certify that said appointment or commission has not been revoked or cancelled, and I would therefore request you to allow the said Wailes access to whatever papers in your Department it may be necessary for him to examine and to give him permission to file such papers as may be needful and proper in the settlement of said claims.

In testimony whereof I have hereunto set my hand and caused the Great Seal of the State of Florida to be hereunto affixed. Done at the Capital, this the 28th day of August, A. D. 1888.

[SEAL.] (Signed) E. A. PERRY,
Governor.

By the Governor.
Attest:
JOHN L. CRAWFORD,
Sec. State.

EXHIBIT F.

Letter of Governor Fleming.

STATE OF FLORIDA, EXECUTIVE OFFICE,
TALLAHASSEE, *March* 28, 1889.

Hon. William Windom, Sec. of the Treasury, Washington, D. C.

SIR: By the 5th section of the Deficiency Bill, approved
54 March 2nd, 1889, provision is made for the examination by the Treasury Department of the claim of the State of Florida,

as reported in the letter of the Secretary of War, dated May 22, 1882, and a report thereon to the next regular session of Congress, and in connection therewith a report of the amount of all claims in favor of the General Government against the State of Florida, and the Statement of an account between the General Government and said State.

As in that examination evidence may be required, and, possibly, some now in the files of this State, I hereby respectfully request that permission be given Mr. S. I. Wailes, the Agent of this State upon this claim, to file such papers and evidence as may be necessary, and to do all other necessary acts required, by your Department, of this State in said examination.

Hoping that it may suit your convenience to enter upon this examination at an early day, I remain,

Respectfully your obedient servant.

(Signed) FRANCIS P. FLEMING,
Governor of Florida."

A letter from petitioner to Governor Fleming and one to Governor Mitchell are also attached to the petition, setting forth what had been done before the Departments and Congress, in regard to the claims of the State.

The following statutes of the State of Florida and extracts from the Legislative Journals are also involved in the consideration of this case:

"Chapter 1275 (No. 18).

An act for the relief of Sheriffs and other ministerial officers of the Court.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened, That the Comptroller of Public Accounts be and he is hereby authorized to credit Sheriffs and other ministerial officers of the Court against whom charges for the non-collection of fines or forefeitures
55 has hitherto or may hereafter be made, upon the certificate of the Judge of the Circuit Court under seal of the county in which said Sheriff or other ministerial officer may reside, that the party or parties upon whom said fines were or are imposed, or against whom said forefeitures are rendered, were and are totally insolvent.

SEC. 2. Be it further enacted, That any citizen shall have the right to appeal from the decision of the Comptroller to a Circuit Court Judge at Chambers or in Term Time, and said Court, after notice to the Comptroller and full hearing on the evidence, shall give such decree as equity and justice demands, and the said Comptroller shall issue his warrant on said decree.

Passed the House of Representatives December 7, 1861. Passed the Senate Dec. 12, 1861. Approved by the Governor December 14, 1861."

"TALLAHASSEE, FLORIDA, *April* 13, 1903.

To the Honorable Members of the Senate of the State of Florida.

GENTLEMEN: Your petitioners, S. I. Wailes and Mrs. L. G. Beard (for the estate of W. K. Beard), beg leave to present this their petition to your Honorable Body for such relief as they are entitled to receive under the S. I. Wailes contract for commissions due on the money recently paid by the United States to the State of Florida in the settlement of the Indian War Claims of this State; and they respectfully ask that payment for services rendered in the interest of said claim may be authorized by bill or otherwise. Attached to this petition is a statement of facts showing work done and monies expended as provided for in said contract, the original of which will be submitted to any committee to which your Honorable Body refers this petition.

And your petitioners will ever pray.

WAILES & BEARD,
By S. S. WAILES."

"Chapter 5334 (No. 229), Acts of 1903.

An Act for the Relief of S. I. Wailes and the Estate of W. K. Beard, Deceased, and in Full Settlement of any Claims which the said S. I. Wailes and the Estate of W. K. Beard, Deceased, May
56 Have against the State of Florida.

Whereas, S. I. Wailes and L. G. Beard, representing the estate of W. K. Beard, deceased, claim that the State of Florida is indebted to them in a large sum of money for services rendered by the said S. I. Wailes and the said W. K. Beard, in securing the settlement of the claim of the State of Florida against the United States for expenses incurred in suppressing Indian Hostilities in the years 1849 and 1857, inclusive, and,

Whereas, After full investigation we find the sum of twenty-five thousand dollars ($25,000.00), is full and just compensation for any and all services which may have been rendered to the State of Florida by the said S. I. Wailes and W. K. Beard, deceased, therefore,

Be it Enacted by the Legislature of the State of Florida:

SECTION 1. That the Comptroller be and he is hereby directed to draw two warrants upon the treasurer, payable out of the Indian War Claims Fund now in his hands, in full and final settlement of any and all claims which the said S. I. Wailes and the said L. G. Beard, representing the estate of W. K. Beard, deceased, may have against the State of Florida. The said two warrants aggregating the sum of twenty-five thousand dollars, ($25,000.00), and that the treasurer be and he is hereby directed to pay the same; one of said warrants shall be made to S. I. Wailes, and one to Mrs. L. G. Beard, representing the estate of W. K. Beard, deceased, for such sums, respectively, as may be determined between them by agreement, arbitration, litigation or otherwise. The said warrants shall be delivered to S. I. Wailes and Mrs. L. G. Beard upon the presentation

of receipts in full against the State of Florida, from S. I. Wailes, W. E. Wailes and the legal representatives of the estate of W. K. Beard.

SEC. 2. This Act shall take effect immediately upon its approval by the Governor, or upon its becoming law without his approval. Approved June 13, 1903."

This petition was presented to the Judge of the Second Judicial Circuit, and the application for the alternative writ was denied. From this judgment a writ of error was sued out.

57 Per *Curiam* (after stating the facts):

The contention here is that Section 2 of Chapter 1275 of the Acts of 1861 (being the same as Section 27 p. 200 McClellan's Digest) and Sections 1 and 2 of the Act of 1848 embraced in Section 6 p. 196 of McClellan's Digest, were in force at the time that Governor Drew made his alleged contract with plaintiff in error; that they became a part of his contract "and that under Section 27 of McClellan's Digest he has a remedy by which, if the Comptroller does not examine, audit and settle his account satisfactorily, he may go into court and have such decree as equity and justice demands."

It will be observed, however, that the title of Chapter 1275 is a restrictive one. It is entitled "An Act for the relief of Sheriffs and Other Ministerial Officers." The first section authorizes the Comptroller to credit sheriffs and other ministerial officers with certain uncollected fines and forfeitures, and the second section gives any citizen a right of appeal from the decision of the Comptroller to a Circuit Judge who is empowered to hear evidence and give such decree as equity and justice demands, and the Comptroller is required to issue his warrant on said decree. To bring the second section within the purview of the title and thus get at the intention of the legislature we think that the said section can not be held to include any other citizen than those mentioned in said title and in said first section, and said act has no reference to such a claim as that of plaintiff in error. Moreover this act was adopted before the constitution of 1868 was adopted. In this constitution the duties and powers of the Comptroller are not so extended as they were in the laws existing previous thereto as to settling claims and drawing his warrants therefor. See Section 16, Article 5, and Section 4, Article 8, Constitution of 1868. We therefore are unable to give to Section 2, Chapter 1275, the application which the plain-
58 tiff in error contends for.

The other statute law referred to, viz., Section 6, p. 196 McClellan's Digest, when narrowed down by the application to it of the constitutional provisions we have referred to, at most makes it the duty of the Comptroller to audit claims and accounts against the State. But this statute, so far as we are informed, does not abdicate the general jurisdiction and authority of the legislature over the question of claims against the State. It appears from the Senate Journal of the session of the legislature of 1903, p. 48, that the

petition of Wailes and Beard which is copied in the Statement, was introduced in the Senate by Mr. G. Crill, Senator from the 26th District. The Journal shows that when said petition was presented it was referred to a committee; that the committee heard the testimony of Wailes and others, and went into an extensive investigation of this claim; that it is the same claim as the one before us; that there were majority and minority reports upon it. The Journal of the House of Representatives shows similar proceedings. The result, whether equitable and just is not for us to judge, was the passage of Chapter 5334 Laws of 1903, which is copied in the foregoing statement. The preamble alleges there was a full investigation, and fixes what is alleged to be just compensation, and directs the Comptroller to draw two warrants upon the Treasurer in full and final settlement of said claim. We have no doubt that under the circumstances the legislature had authority and power to adjust and settle this claim, and that having done so, the Comptroller was not authorized to entertain the petition of Wailes. De Groot v. United States, 5 Wall. (U. S.) 419, text 432,433; Julian v. State 122 Ind. 68 text 78, 23 N. E. Rep. 690; Danley v. Whiteley, 14 Ark. 687; State ex rel. State avings Association v. Draper, 44 Mo. 245; State ex rel. Sayre v. Moore, 40 Neb. 854, text 860, 861.

The judgment refusing an alternative writ and dismissing the petition is affirmed.

Taylor, Shackleford, Cockrell and Hocker, J. J., concur.
Whitfield, C. J., not participating.

59 On the 6th, day of January, A. D. 1912, the following judgment was entered upon the foregoing opinion of the court:

THE STATE OF FLORIDA on the Relation of SIDNEY I. WAILES, Plaintiff in Error,
v.
A. C. CROOM, as Comptroller of the State of Florida, Defendant in Error.

Writ of Error to a Judgment of the Circuit Court within and for the County of Leon.

This cause having been submitted to the court at a former day of this term upon the transcript of the record of the judgment aforesaid, and argument of counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises; it seems to the court that there is no error in the said judgment; it is therefore considered, ordered and adjudged by the court that the said judgment of the Circuit Court be and the same is hereby affirmed; it is further ordered that the defendant in error do have and recover of and from the plaintiff in error his costs by him in this behalf expended, which costs are taxed at the sum of — Dollars all of which is ordered to be certified to the court below.

The opinion of the court in this cause was this day read and ordered to be filed.

Mr. Chief Justice Whitfield, took no part in the decision.

60 STATE OF FLORIDA,
County — Leon:

I, M. H. Mabry, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing pages numbered from one to 59 inclusive contain true and correct copies of the transcript of record filed in the Supreme Court of the State of Florida, in the case of The State of Florida, on the relation of Sidney I. Wailes, Plaintiff in error against A. C. Croom, Comptroller of the State of Florida, defendant in error, and of the opinion of the Supreme Court filed in said case on the 6th. day of January A. D. 1912, and of the judgment of the said court entered on said January 6th. 1912, as the same appears from the originals now on file and of record in my office as Clerk of the Supreme Court of said State.

Witness my hand and official seal at Tallahassee, the Capitol of the State, this the 18th. day of January A. D. 1912.

[Seal of the Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk of the Supreme Court of the State of Florida.

61 In the Supreme Court of the United States.

STATE OF FLORIDA on the Relation of SYDNEY I. WAILES,
Plaintiff in Error,
vs.
A. C. CROOM, as the Comptroller of the State of Florida, Defendant in Error.

Error to the Supreme Court of Florida.

Assignment of Errors.

Now comes the said plaintiff in error and respectfully submits:

That in the record proceedings, decision and final judgment of the Supreme Court of the State of Florida in the above-entitled matter there is manifest error in this, to-wit:

1. It was error not to decide and hold that the act of the Legislature of the State of Florida entitled "An act for the relief of Sydney I. Wailes and the estate of W. K. Beard deceased, and in full settlement of any claims which the said Sydney I. Wailes and the estate of W. K. Beard deceased, may have against the State of Florida" approved June 13, 1903, had the effect to impair the validity of the contract made by G. F. Drew, Governor of the State of Florida, upon the part of said State with the said plaintiff in error on the 16th. day of July, 1879, and that said act was unconstitutional and void.

2. The said decision and judgment of the Supreme Court of
61¼ Florida, if upheld, has the effect to destroy and deprive the plaintiff in error of the legal and constitutional rights and remedies which he had under the laws of the State of Florida at the time and date of the entering into the said contract between the State of Florida and the plaintiff in error for the enforcement of said contract.

3. It was error in the Supreme Court of the State of Florida to hold and decide that the Legislature of said State had authority and power to adjust and settle the claim of the plaintiff in error in the manner and form and under the circumstances which it attempted to do by the said act entitled "An act for the relief of Sydney I. Wailes and the estate of W. K. Beard deceased, and in full settlement of any claims which the said Sydney I. Wailes and the estate of W. K. Beard deceased, may have against the State of Florida." approved June 13, 1903.

Wherefore, the plaintiff in error prays that the judgment of the Supreme Court of the State of Florida be reversed and set aside, and that such orders be made and directions be given as to this Honorable Court may appear right and proper.

FRANK CLARK,
FRED BEALL,
Attorneys for Plaintiff in Error.

61½ [Endorsed:] In the Supreme Court of the United States. State of Florida on the Relation of Sydney I. Wailes, Plaintiff in Error, vs. A. C. Croom, as the Comptroller of the State of Florida, Defendant in Error. Assignment of Errors. Filed May 4, 1912. M. H. Mabry, Clerk Supreme Court, State of Florida. Frank Clark and Fred Beall, Attorneys for Plaintiff in error.

62 In the Supreme Court of the United States.

STATE OF FLORIDA on the Relation of SYDNEY I. WAILES,
Plaintiff in Error,
vs.
A. C. CROOM, as the Comptroller of the State of Florida, Defendant in Error.

Error to the Supreme Court of Florida.

To the Hon. Joseph Rucker Lamar, Associate Justice of the Supreme Court of the United States:

The petition of Sydney I. Wailes respectfully shows:

That on the 6th. day of January 1912, the Supreme Court of the state of Florida rendered a final judgment against your petitioner in a certain cause wherein the state of Florida on the relation of Sydney I. Wailes, your petitioner herein, was plaintiff and A. C. Croom, as the Comptroller of the state of Florida, was the defendant dismissing said suit and for cost, as will appear by reference to the record and proceedings in said cause; and that said Court is the

highest Court of said state in which a decision in said suit could be had.

And your petitioner claims the right to remove said judgment to the Supreme Court of the United States by writ of error under Section 709 of the Revised Statutes of the United States, because:

1. Said judgment sustains and upholds as valid a certain act of the Legislature of the state of Florida approved June 13,
63 1903, entitled "An act for the relief of Sydney I. Wailes and the estate of W. K. Beard deceased," which said act violates the Constitution of the state of Florida and the Constitution of the United States in that it impairs a certain valid written contract made by the state of Florida with your petitioner on the 16th. day of July, 1879, and deprives your petitioner of valid, legal, subsisting rights in that it attempts to make him accept $25,000.00 in full settlement of a just claim which he has against the state of Florida for $163,373.80 under and by virtue of said written contract between the state of Florida and himself.

2. And said judgment also has the effect to deprive your petitioner of the benefit and protection of certain laws in force in the state of Florida at the date of the making and entering into the said contract between the state of Florida and himself in that it deprives him of his sole legal remedy for the collection of his claim against the state of Florida.

All of which appears by the record of the proceedings in said cause, which is herewith submitted.

Wherefore, your petitioner prays that allowance of a writ of error returnable into the Supreme Court of the United States, and for citation; and your petitioner will ever pray, etc.

SYDNEY I. WAILES, *Petitioner,*
By FRED BEALL,
Attorney for Petitioner.

Petition for Writ of Error Granted April 11 1912.

JOSEPH R. LAMAR,
Associate Justice, Supreme Court of the United States.

63½ [Endorsed:] In the Supreme Court of the United States. State of Florida on the Relation of Sydney I. Wailes, Plaintiff in Error, vs. A. C. Croom, as the Comptroller of the State of Florida, Defendant in Error. Petition for Writ of Error to the Supreme Court of Florida. Filed May 4, 1912. M. H. Mabry, Clerk Supreme Court, State of Florida. Frank Clark and Fred Beall, Attorneys for Petitioner.

64 Know all men by these presents, That we, Sydney I. Wailes, as principal, and The United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto A. C. Croom, Comptroller of the State of Florida, in the full and just sum of Five Hundred Dollars, to be paid to the said A. C. Croom, Comptroller of the State of Florida, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be

made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this thirteenth day of April, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a term of the Supreme Court of the State of Florida in a suit depending in said Court, between the State of Florida, on the relation of Sydney I. Wailes, plaintiff in error, and A. C. Croom, Comptroller of the State of Florida, defendant in error, a judgment was rendered against the said plaintiff in error, and the said plaintiff in error having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said A. C. Croom, Comptroller of the State of Florida, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said plaintiff in error shall prosecute said writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

SYDNEY I. WAILES. [SEAL.]
By FRED BEALL, *Atty.* [SEAL.]

[Surety Company Seal.]

UNITED STATES FIDELITY & GUARANTY COMPANY.
By WM. L. SNOMESTADT,
Attorney in Fact.

Sealed and delivered in presence of—
JAMES D. MAHER.

Approved by—
JOSEPH R. LAMAR,
Associate Justice of the Supreme Court of the United States.

65 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Florida, on the relation of Sydney I. Wailes, plaintiff in error, and A. C. Croom, Comptroller of the State of Florida, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exer-

cised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a
66 treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said plaintiff in error as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the thirteenth day of April, in the year of our Lord one thousand nine hundred and twelve.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

JOSEPH R. LAMAR,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] State of Florida on the relation of Sydney I. Wailes vs. A. C. Croom, Comptroller of the State of Florida. Original Writ of Error. Filed May 4, 1912. M. H. Mabry, Clerk Supreme Court, State of Florida.

67 UNITED STATES OF AMERICA, *ss:*

To A. C. Croom, Comptroller of the State of Florida, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Florida, wherein The State of Florida, on the relation of Sydney I. Wailes, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph R. Lamar, Associate Justice of the Supreme Court of the United States, this thirteenth day of April, in the year of our Lord one thousand nine hundred and twelve.

JOSEPH R. LAMAR,
Associate Justice of the Supreme Court of the United States.

67½ [Endorsed:] State of Florida on the relation of Sydney I. Wailes vs. A. C. Croom, Comptroller of the State of Florida. Original Citation. Filed May 4, 1912. M. H. Mabry, Clerk Supreme Court, State of Florida.

68 THE STATE OF FLORIDA on the Relation of SYDNEY I. WAILES
vs.
A. C. CROOM, Comptroller of the State of Florida.

STATE OF FLORIDA,
County of Leon, ss:

Sydney I. Wailes being duly sworn, deposes and says that on Wednesday, May 1st, 1912, at the City of Jacksonville in said State of Florida, he served the Citation under the Writ of Error from the Supreme Court of the United States to the Supreme Court of the said State of Florida, in the above entitled cause, by exhibiting said Citation to Hon. Park M. Trammell, Attorney General of said State of Florida, and delivering to him a copy of said Citation, which copy he requested me to take and leave at his office in the Capitol of said State of Florida at Tallahassee, which I have done as requested.

S. I. WAILES.

Subscribed and sworn to this 4*nd* day of May, 1912, in my presence.

[Seal of the Supreme Court of the State of Florida.]

W. H. MABRY,
Clerk Supreme Court, State of Florida.

69 UNITED STATES OF AMERICA,
Supreme Court of Florida:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same. And I further certify that the foregoing pages numbered from 60 to 68 inclusive, contain the original assignment of errors; original petition for writ of error and allowance thereof; copy of writ of error bond; original writ of error; and original citation together with service thereof. And I further certify that the original writ of error bond and a copy of the writ of error is now on file in my office as Clerk of the Supreme Court of the State of Florida.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court, in the City of Tallahassee, this the 8th day of May, A. D. 1912.

[Seal of the Supreme Court of the State of Florida.]

W. H. MABRY,
Clerk Supreme Court, State of Florida.

Endorsed on cover: File No. 23,207. Florida Supreme Court. Term No. 646. The State of Florida on the relation of Sydney I. Wailes, plaintiff in error, vs. A. C. Croom, Comptroller of the State of Florida. Filed May 11th, 1912. File No. 23,207.

Office Supreme Court, U. S.
FILED.
NOV 8 1912
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States

OCTOBER TERM, 1912
No. 646

THE STATE OF FLORIDA, ON THE RELATION OF SYDNEY I. WAILES,
PLAINTIFF IN ERROR,
vs.
A. C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA,
DEFENDANT IN ERROR.

MOTION TO DISMISS WRIT OF ERROR, ETC.

PARK M. TRAMMELL,
W. S. JENNINGS,
E. J. L'ENGLE,
Attorneys for Defendant in Error.

THE DREW PRESS, JACKSONVILLE 247802

In the Supreme Court of the United States.

THE STATE OF FLORIDA, ON THE RELATION OF SIDNEY I. WAILES,
Plaintiff in Error,
vs.
A. C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA,
Defendant in Error.

October Term, 1912. No. 646.

NOTICE.

NOTICE IS HEREBY GIVEN that on Monday, December 2nd, 1912, at the opening of the above entitled Court, or as soon thereafter as counsel can be heard, the Defendant in Error will submit to said Court a motion to dismiss the writ of error in the above entitled cause, together with the certificate and affidavit in support thereof, copies of which are hereto attached, and will then and there move said Court to dismiss said writ of error upon the grounds stated in said motion.

Park M. Trammell
U. S. Jennings
E. J. L. Engle
Attorneys for Defendant in Error.

To Frank Clark, Esq.,
Gainesville, Fla.
Fred Beall, Esq.,
Washington, D. C.
Attorneys for Plaintiff in Error.

STATE OF FLORIDA,
DUVAL COUNTY.

On this day personally appeared before me H. P. Osborne, who, being duly sworn, deposes and says:

That on the 5th day of November, 1912, he served upon Fred Beall, Esq., and Frank Clark, Esq., Attorneys for Plaintiff in Error, a copy of the foregoing motion to dismiss the writ of error in the case of State Ex Rel. Sidney I. Wailes, Plaintiff in Error, against A. C. Croom, as Comptroller of the State of Florida, Defendant in Error, pending in the Supreme Court of the United States, No. 646, October Term 1912, and the certificate of the Secretary of State of the State of Florida and affidavit of W. C. Croom, to be used in connection with the said motion, and of the notice of submission thereof to said Court, and of the brief of defendant in error in support of said motion by depositing a true copy of each of said papers in the United States Post Office at Jacksonville, Florida, on the day aforesaid, in an envelope securely sealed, duly postpaid and addressed to the attorneys for said Plaintiff in Error, respectively, to-wit: To Fred Beall, Esq., Attorney at Law, Washington, D. C., care Clerk of the Supreme Court of the United States, and to Frank Clark, Esq., Attorney at Law, Gainesville, Florida; and affiant further says that said Frank Clark resides in Gainesville, Florida, and that affiant is informed and believes that the said Fred Beall, resides in the City of Washington, District of Columbia; and, further deposing, affiant says that by due course of mail more than three weeks will elapse from the time of the depositing of said notices in the Post Office at Jacksonville, Florida, as aforesaid,

to the time of hearing of said motion as set forth in said notice, to-wit: on December 2nd, 1912.

H. P. Osborne

Sworn to and subscribed
before me this 6th
day of November, 1912.

Bertha D. Farnam
Notary Public.

Supreme Court of the United States

STATE OF FLORIDA, ON THE RELATION OF SIDNEY I. WAILES,
Plaintiff in Error,
vs.
A. C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA,
Defendant in Error,

October Term, 1912. No. 646.

MOTION TO DISMISS.

Come now the attorneys for the defendant in error and move the Court to dismiss said writ of error, on the grounds following:

1. This writ of error was sued out to a judgment of the Supreme Court of Florida affirming the refusal of the trial court to grant a writ of mandamus against the defendant in error, A. C. Croom, in his official character of Comptroller of the State of Florida. The judgment of the Supreme Court of Florida was rendered on January 6th, 1912. The defendant in error, A. C. Croom, died on February 7th, 1912, while still the incumbent of said office of Comptroller of the State of Florida. William V. Knott was appointed Comptroller of the State of Florida on the 12th day of February, 1912, qualified on the 17th day of February, 1912, and still holds said office.

2. That notwithstanding the death of the defendant in error and the appointment of his successor, on the 11th

day of April, 1912, the plaintiff in error, by his attorneys presented a petition for a writ of error in said cause, without any change or substitution of parties to the Hon. Joseph R. Lamar, a Justice of this Court, and the same was duly granted.

3. That the plaintiff in error has never made application to any Court to make the successor in office of said A. C. Croom, deceased, a party to this cause, or to require him to defend the same, neither have any of the pleadings in said cause nor any notice of the pendency thereof ever been served upon the present Comptroller of the State of Florida; but on the contrary, on May 4th, 1912, the citation issued out of this Court duly cited and admonished A. C. Croom, Comptroller of the State of Florida, (then deceased) to be and to appear before this honorable Court within thirty days time, and said citation was served by the plaintiff in error in person, as appears from his affidavit in the record, by delivering a copy thereof to the Attorney General of the State of Florida.

It is therefore urged, that this cause finally abated by the death of the defendant in error while in office, before the writ of error was applied for or sued out herein, and that the said writ of error should be dismissed.

Cary D. Landis
W. S. Jennings
E. M. Gwynn

Attorneys for Defendant in Error.

STATE OF FLORIDA,
DUVAL COUNTY.

Personally appeared before me WILLIAM C. CROOM, who, being duly sworn, deposes and says: That he is a citizen and resident of the City of Jacksonville, State of Florida; that he is the son of A. C. Croom, formerly Comptroller of the State of Florida and Defendant in Error in the case of the State of Florida, Ex Rel. Sidney I. Wailes, against A. C. Croom as Comptroller of the State of Florida, pending in the Supreme Court of the United States, No. 646 October term 1912; and that said A. C. Croom died on the 7th day of February, 1912.

WILLIAM C. CROOM.

Sworn to and subscribed before me this 30th day of October, 1912.

R. E. COLCORD,
Notary Public, State of Florida at Large.
(Official Seal)

I, H. CLAY CRAWFORD, Secretary of State of the State of Florida, do hereby certify that A. C. Croom, Defendant in Error in the case of State of Florida, Ex Rel. Sidney I. Wailes, against A. C. Croom as Comptroller of the State of Florida, pending in the Supreme Court of the United States (No. 646 October term 1912) died on the 7th day of February, 1912; that at the time of his death said A. C. Croom was Comptroller of the State of Florida; that William V. Knott was appointed Comptroller of the State of Florida by the Governor of said State on the 12th day of February, 1912, in the place and stead of the said A. C. Croom, deceased; that said William V. Knott filed his oath and bond and qualified as such Comptroller on the 17th day of February, 1912, and that ever since said time he has been acting as and still is Comptroller of said State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed hereto the great seal of the State of Florida, this 29th day of October, 1912.

H. CLAY CRAWFORD,

Secretary of State of the State of Florida.

(Great Seal of the State of Florida.)

Office Supreme Court, U. S.
FILED.
NOV 8 1912
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States

OCTOBER TERM, 1912

No. 646

THE STATE OF FLORIDA, ON THE RELATION OF SYDNEY I. WAILES,

PLAINTIFF IN ERROR,

vs.

A. C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA,

DEFENDANT IN ERROR.

BRIEF ON MOTION TO DISMISS

PARK M. TRAMMELL,
W. S. JENNINGS,
E. J. L'ENGLE,
Attorneys for Defendant in Error.

THE DREW PRESS, JACKSONVILLE 247430

Supreme Court of the United States

THE STATE OF FLORIDA, ON THE RELATION OF SYDNEY I. WAILES,
Plaintiff in Error,
vs.
A. C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA,
Defendant in Error.

October Term, 1912.. No. 646.

BRIEF

On the Motion to Dismiss.

STATEMENT OF FACTS.

The action was brought in the Circuit Court of the Second Judicial Circuit of the State of Florida, in and for Leon County, seeking a writ of *mandamus*, to compel A. C. Croom, then Comptroller of the State of Florida, to audit and settle certain claims for money alleged by the relator to be due him from the State of Florida. The writ was denied and on appeal to the Supreme Court of Florida a judgment affirming the decision of the trial judge was rendered January 6th, 1912.

On February 6th, 1912, the respondent A. C. Croom died while still holding the office of Comptroller. His successor was promptly appointed and qualified. On April 11th, 1912, the attorneys for the plaintiff in error presented a petition for a writ of error to Mr. Justice Lamar, without any attempt at a substitution of parties,

which was granted. On May 4th, 1912, citation duly issued herein, citing and admonishing *A. C. Croom*, as Comptroller of the State of Florida, to be before this Court within thirty days time and defend this cause, etc.

No application has been made to any Court to make the present Comptroller a party to the proceedings; no order or citation requiring him to defend has been served upon him.

ARGUMENT.

We rely upon the case of United States *ex rel.* Bernardin vs. Butterworth, 169 U. S., 600, in which this Court said:

"In United States vs. Boutwell, 84 U. S., 604, it was held that in the absence of statutory provision to the contrary, a mandamus against an officer of the government abates on his death or retirement from office, and that his successor in office cannot be brought in by way of amendment of the proceeding, or on an order for the substitution of parties. The conclusion reached was put upon two independent grounds, and we quote the reasoning of the court, expressed in its opinion delivered by Mr. Justice Strong, as follows: ' * * * It necessarily follows, that on the death or retirement from office of the original defendant, the writ must abate in the absence of any statutory provision to the contrary. When the personal duty exists only so long as the office is held, the court cannot compel the defendant to perform it after his power to perform has ceased. And if a successor in office may be substituted, he may be muleted in costs for the fault of his predecessor, without any delinquency of his own. Besides, were a demand made upon him, he might discharge the duty and render the interposition of the court un-

necessary. At all events, he is not in privity with his predecessor, much less is he his predecessor's personal representative. And, even if the retirement of the defendant from office and his consequent inability to perform the act demanded to be done, does not abate the writ, or necessitate its discontinuance, there is still an insuperable difficulty in the way of our directing the substitution asked for. We can exercise only appellate power. We have no original jurisdiction in the case. But any summons issued, or rule upon the successor in office, requiring him to become a party to the suit, would be the exercise of original jurisdiction over both a new party and a new cause, for the duty which he would be required to perform would be his own, not that of his predecessor.' "

See also

Cox vs. U. S., ex rel. McGarrahan, 9 Wall. (76 U. S.) 298.

Warner Valley Stock Co. vs. Smith, 165 U. S., 28.

The line of decisions of this Court represented by Murphy vs. Utter, 186 U. S., 95, is not pertinent or controlling, because the respondent here is not a continuing public body or board the existence and duties of which are unaffected by death or resignation of its members, which was the controlling and distinguishing feature of Murphy vs. Utter and similar cases. The distinction is between applications for mandamus against "a head of a department or bureau for a personal delinquency, and those against a continuing municipal board with a continuing duty, and the delinquency is that of the board in its corporate capacity" (Murphy vs. Utter, supra). In the case at bar the duty sought to be enforced is purely personal and discretionary. If plaintiff in error has a cause of action at all, it is based solely upon a "personal

delinquency" of the late Comptroller of Florida. There has been no delinquency on the part of the present Comptroller, and no opportunity has ever been given to him to act on the Wailes claim. It cannot be assumed that he would entertain the same opinion as that of his predecessor in office, or take such a position as would render a writ of mandamus necessary. To extend the functions of this writ to Comptroller Knott would be to deprive him of his discretionary powers, and to bind him by the personal views of his predecessor, which, if the opportunity existed, he might disaffirm.

It is manifest that the act sought to be commanded is in its nature a matter of personal discretion, and one to which the language of this Court in the Butterworth case is peculiarly applicable. There is not even a remote similarity or analogy between the present case and that of Murphy vs. Utter, because the duty of examining, auditing and settling a claim against the State is purely personal, and refusal to perform this duty, if it be unjustified, is not a wrong which attaches to the office or which binds subsequent incumbents of the office.

Neither can it be successfully contended that the act of Congress of February 8th, 1899, (30 Stats. at Large 822) has any bearing upon this controversy. That act is expressly limited to proceedings against "the head of a Department or Bureau of the United States in his official capacity or in relation to the discharge of his official duties." The act does not attempt to regulate the practice in mandamus proceedings in State Courts, or to give the Supreme Court of the United States power to authorize new parties to be brought into a suit, pending

an appeal, when such suit had abated by death before writ of error was applied for.

RULE 15 NOT APPLICABLE.

Rule 15 of this Court, providing a method whereby plaintiff may suggest the death of a defendant pending an appeal, and obtain an order requiring "the proper representatives in personalty or realty of the deceased party" to become parties to the suit, obviously has no application here. It will be noted that in the decision just quoted, the Court expressly holds that the successor in office of the deceased official is not in privity with his predecessor, much less is he his predecessor's personal representative.

And the same question was considered in another part of the quoted opinion, where it was urged that the statute of Maryland provided that no action should abate by the death of either of the parties to such action. This Court said:

"We are unable to perceive that this statute, either in its terms or its spirit, is applicable to cases like the present one. Neither the heir, devisee, executor or administrator of a deceased official would have any legal interest in such a controversy. Nor, in the case of a resignation, could the successor be said to be 'a person interested on the part of the defendant.'"

RULE IN FLORIDA SUPREME COURT.

There is no statutory authority in Florida providing for the substitution of a successor in office as a party, upon the death or retirement of the incumbent.

The question whether such substitution may be compelled and the successor required to defend, upon the *death* of the incumbent, has never been passed upon by the Supreme Court of Florida. In the case of the *expiration of the term of office*, the Florida Court has expressly held that the writ abates, where no application has been filed to make the successor a party or to require him to defend; and the Court has left it an open question whether or not such a change of parties could be enforced in any event, against the resistance of the successor in office.

The case referred to is State of Florida *ex rel.* Williams vs. Bloxham, 42 Fla. 501 (1900), a mandamus case in which the Court said in part:

"The proceeding can not be regarded in any sense as a suit against the State, because the State cannot in our courts be sued by an individual. The proceeding is, therefore, either a personal one against the defendant as an individual to compel him to perform a personal duty devolving upon him because of his official position, or it is one against the official which appertains to the office of Comptroller, regardless of the person who actually occupies it. In either event, the result must be the same, for in the one case the power of the defendant to perform the required duty, and in the other his power to represent the office or official sought to be coerced in this litigation, has ceased to exist, by reason of the expiration of his term of office. If we should direct the writ to the defendant, he would be without power to do the act commanded, and if we should direct it to his successor in office, the latter could properly complain that he had been commanded without an opportunity to be heard, and that an administrative office of the executive department of the government had been coerced upon a defense made by one whose power to represent such office had ceased. In

State ex rel. Patton vs. Bloxham, Comptroller, 33 Fla., 482, the proceedings were begun against Comptroller Barnes, but by agreement they were continued against his successor, who approved the official acts of his predecessor brought in question and adopted the return filed by him, but no such agreement has been entered into in this case. The present Comptroller not being a party to these proceedings or representing the defense thereof, and there being no application to make him a party or to require him to defend, we can do nothing but dismiss the suit. Warner Valley Stock Co. vs. Smith, 165 U. S. 28; Fox vs. Trinidad Waterworks Co., 7 Colo. App., 401; State vs. Guthrie, 17 Neb., 113, and authorities cited therein.

"We do not mean to decide that the suit finally abates by the expiration of the term of office of a defendant State official in mandamus proceedings, and that the proceedings cannot be continued as against his successor upon notice to him, as is held in some of the cases cited, for that question is not now involved; nor do we by this decision come in conflict with anything decided in County Commissioners vs. Bryson, 13 Fla., 281, and State *ex rel.* Andreu vs. Canfield, 40 Fla., 36. In the class of cases considered in those decisions, the duties sought to be compelled rested upon a corporation or municipality subject to be sued, but were required to be performed by and through the instrumentality of certain officers or agents for and on behalf of the corporation or municipality."

No aid or comfort can be found in the foregoing decision on behalf of any proceeding to force and compel the successor in office of an official whose term has expired, to become a party to the suit and defend it.

The general reasoning employed by the Florida Court, which is quite similar to the reasoning of this Court in the Butterworth case, is entirely inconsistent with the theory that such substitution of parties could be enforced. And

the presumption is strong that the Florida Court would hold that in case of the death of an official while in office, the action against him would finally abate, for there is a great distinction recognized between death and mere expiration of term of office:

Thus it is said in 26 CYC. 420:

"In the absence of statutory provision to the contrary, mandamus against a public officer abates on the death of defendant."

United States vs. Butterworth, supra.
People vs. Lantry, 88 N. Y. App. Div., 583.

"Expiration of term of office of defendant. No uniform rule. It cannot be denied that there is a sharp conflict of authority on this question. The federal courts, as well as some of the State courts, proceeding upon the theory that the proceedings are directed, not against the government, of which defendant is an officer, but against the officer himself, have decided that the proceedings abate upon the expiration of defendant's term of office, whether by his own resignation or otherwise."

"This rule applies as well after judgment and pending appeal therefrom as before."

26 CYC., 421.
Seymour vs. Nelson, 11 App. Cas. (D. C.) 58.
Warner Valley Stock Co. vs. Smith, 165 U. S., 28.

Summarizing this argument, so far as the Florida courts are concerned, we would say:

(1) There is no statutory provision or rule of court in Florida to compel or permit a substitution of parties.

(2) The Florida Court holds that the suit abates where there is no agreement to the contrary, and does not hold that substitution of parties can be compelled.

Therefore, there is nothing in the state laws or decisions to prevent this Court from following the rule of the federal courts.

RESPONDENT DIED BEFORE APPEAL.

The plaintiff in error is peculiarly delinquent, in that, although Comptroller Croom died soon after the judgment of the Supreme Court of Florida, yet the plaintiff sued out a writ of error against the deceased, and caused citation to be issued against him. It is evident that as the defendant in error was not in existence at the time the writ of error was sued out, there is properly speaking no cause before this Court at all, and the motion to dismiss should be granted.

Park M. Trammell

Wm. Jennings

E. J. C. Engle

Attorneys for Defendant in Error.

STATE OF FLORIDA ON THE RELATION OF WAILES *v.* CROOM, COMPTROLLER OF THE STATE OF FLORIDA.

ERROR TO THE SUPREME COURT OF FLORIDA.

No. 646. Submitted December 2, 1912.—Decided December 16, 1912.

Where it appears, although by evidence outside the record, that before the writ of error to the state court was sued out, the public officer against whom a writ of mandamus is prayed had died, and his successor had qualified, the writ will be dismissed.

THE facts are stated in the opinion.

Mr. W. S. Jennings, *Mr. E. J. L'Engle* and *Mr. Park Trammell* for defendant in error, in support of motion to dismiss.

No appearance for plaintiff in error.

Memorandum opinion, by direction of the court, by MR. CHIEF JUSTICE WHITE.

This is an action in mandamus. The party proceeded against in the state court was A. C. Croom, sued in his official character as comptroller of the State of Florida. On January 16, 1912, the Supreme Court of Florida affirmed a judgment denying the writ. On April 11, 1912, this writ of error was sued out by the relator below, and Croom, comptroller, was named as defendant in error. Citation was served by delivering a copy to the Attorney General of the State of Florida. The attorneys who represented the defendant in the state courts, acting as friends of the court, have placed upon the files evidence establishing that A. C. Croom died on February 7, 1912, and that William V. Knott was thereafter appointed and duly qualified as comptroller of the State of Florida, and has been acting as such since February 17, 1912. Under the circumstances thus detailed it results that the writ of error was improvidently sued out, and it must therefore be dismissed.

Writ of error dismissed.